90-1253

No. _____

Supreme Court, U.S.
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In the SUPREME COURT of the UNITED STATES

October Term 1990

SUSAN J. FASSE and ELIZABETH FASSE,
PETITIONERS.

v.

PATRICIA HODGSON, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF GEORGIA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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ONE

QUESTIONS PRESENTED FOR REVIEW

A.

Drawn into question and validated in the State courts of Georgia, and the Georgia Supreme Court in these cases on November 7, 1990, is the state action of Georgia, as enacted and promulgated, by its compulsory, non-jury and non-binding Civil Arbitration Rule 1000 of the Fulton County, Superior Court, Atlanta Judicial Circuit, as being repugnant to the due process "notice" requirements and mandates of the 14th Amendment, Section 1, of the United States Constitution as has been decided and rigidly followed by the United States Supreme Court in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (70 SC 652) (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (103 SC 2706) (1983) and *Tulsa Professional Collection Services, Inc. v.*

Pope, Executrix Of The Estate Of Pope, 485 U.S. 478 (1988), and other cases, where the only requirement for due process "notice" to the parties or their attorneys of an arbitration award, which adversely affects property interests, is that it be "published" and which publication is solely carried out by the posting of the arbitration award on a bulletin board located on the seventh (7th) floor of the court house, which area is secured with limited access allowed by and to the general public, and with one other copy of the arbitration award being kept in a file drawer of the private office of the court's Civil Arbitration Administrator. Pursuant to Civil Arbitration Rule 1000 of the Fulton County, Superior Court, Atlanta Judicial Circuit, in provision, promulgation and administration the arbitration award is

not mailed to the parties or their attorneys; is not personally served upon the parties or their attorneys; is not filed with the clerk of the Superior Court of Fulton County, Georgia; is not published in the county legal organ; is not published in a state wide legal organ, and then thirty (30) days after the seventh (7th) floor court house bulletin board "publication", of the so called "non-binding" and non-jury arbitration award, if the party whose property interests have been adversely affected has not filed a "trial de novo demand" pursuant to this lack of notice, with its risk of due process deprivation, a final judgment nisi prius is entered by the Superior Court against the citizen without notice of the judgment, either before the entry of the final judgment or after its entry. This is the practice and procedure irrespective of whether the

offended and affected party did or did not have an initial and timely pending demand for trial by jury on file.

Is this "state action" "publication" sufficient to meet the requirements and mandates of 14th Amendment due process "actual" notice and is it reasonably calculated to reach interested persons and is the forum chosen not substantially less likely to bring home notice than other of the feasible and customary substitutes?

B.

Drawn into question and valididate by the Georgia Supreme Court on November 7, 1990, is whether compulsory Civil Arbitration Rule 1000 of Fulton County, Superior Court, Atlanta Judicial Circuit, is unconstitutional as being repugnant to the 14th Amendment, Section 1, of the

United States Constitution guarantees of equal protection of the laws as against the State of Georgia's governmental action and regulation that is arbitrarily discriminatory in making unreasonable classifications between persons or groups of persons or classifications that are too vague?

TWO

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THREE

REFERENCE TO THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THESE CASES BY OTHER COURTS

(a) None. (SEE: "Note" below.)

NOTE: The Georgia Supreme Court in these cases affirmed the offensive judgments against petitioners without opinion pursuant to its Rule 59. (A. 2) This was subsequent to the Georgia Supreme Court granting both of petitioners' Applications For Discretionary Appeal (A. 100, 102, 104, 109) pursuant to its Rule 25 and Official Code of Georgia (a/k/a: OCG & OCGA), section 5-6-35 on the grounds that (1) reversible error appears to exist; or (2) the establishment of a precedent is desirable (A. 101, 103) and with directions that petitioners [there "Appellants"] address in their briefs the questions, with which the *"Court is*

particularly concerned with" of:

"1) whether the motions to set aside should have been granted because the defendants did not have notice of the final judgments?"

"2) Whether the notice of award provisions of Fulton County Local Rule 1000 are sufficient?" (A. 100, 101, 102, 103)

FOUR

JURISDICTIONAL GROUNDS STATEMENT

The jurisdiction of this Court is invoked as follows:

(a) October 17, 1990 is the date of the entry by the Georgia Supreme Court of the judgments sought to be reviewed against the petitioners which affirmed without opinion the offensive judgments of the Superior Court of Fulton County, Georgia. (A. 2)

(b) November 7, 1990 is the date that the Georgia Supreme denied petitioners' timely filed Petitions For Rehearing (Motion For Reconsideration) pursuant to its Rule 47. (A. 1)

(c) November 14, 1990 is the date that the Georgia Supreme Court granted to petitioners a stay order from transmittal of the remittitur (pursuant to its Rule 61) so that an appeal or an application for certiorari could be filed in the

Supreme Court of the United States, which stay order is to remain in effect until final disposition by the United States Supreme Court. (A. 3, 4, 5)

(d) There are no extensions involved in these appeals.

(e) 28 USC 1257 (a) [*effect. 9-25-88 and repealing former 28 USC 1257 (b)*] and 28 USC 2101 (a) [United States Supreme Court Rule 13.1] are believed to confer on this Court jurisdiction to review the judgments in question by writ of certiorari. *SEE: End Note one (#1).*

FIVE

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED IN THE CASES

14th Amendment, Section 1, United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it jurisdiction the equal protection of the laws. (Emphasis added)

Local Rule 1000, paragraph [section], 14, Compulsory, non-binding, non-jury Arbitration Rule of Fulton County,

Superior Court (Atlanta, Georgia Judicial Circuit):

At the close of the arbitration hearing, the arbitrators shall confer and return a written award for one side or the other which shows the damages, if any awarded, and which shows any dissent. A simple majority of the arbitrators is required to return an award. The award is published to the parties, and the written award filed with the Court Administrator or his designee on the day of the hearing. No written findings of fact and conclusions of law are required. (Emphasis added) (A. 118, 119)

Local Rule 1000, Compulsory, non-binding, non-jury Arbitration Rule of Fulton County, Superior Court (Atlanta, Georgia Judicial Circuit):

All civil actions filed and seeking primarily money damages of twenty-five thousand dollars ($25,000.00) or less, or for damages in an unstated amount, shall be required to go through compulsory but non-binding arbitration. Any party to an action not otherwise qualifying may petition the Court that the case be scheduled for arbitration when it is not for the purpose of delay; the trial judge to whom the case has been assigned may order arbitration at any time at his or her discretion on any case whether or not it otherwise qualifies for arbitration; or the Court may, at its discretion, remove a case from arbitration or limit the issues to be arbitrated. (Emphasis added) (A. 212, 213 *for more lengthy text.*)

28 USC 1257 (a), *effective 9-25-88 and repealing former 28 USC 1257 (b):*

(b) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question of the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 USC 2101 (c) [United States Supreme Court Rule 13.1]:

(c) Any other appeal or any writ of certiorari intended to bring any judgment

or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree.

SIX

STATEMENT OF THE CASE

The federal questions sought to be reviewed on this appeal were raised by petitioners at the earliest possible time before the Georgia Supreme Court in their Applications For Discretionary Appeal (A. 104, 105, 109, 110) and their Enumeration of Errors (A. 7, 8, & 41, 43) and briefs (A. 10 & 45) to the Georgia Supreme Court, and at the earliest possible time, nisi prius, in the court of first instance, the Superior Court of Fulton County, Georgia, in their respective Motions To Set Aside Judgments (A. 115, 116 & 124, 132, 133, 134, 136), as follows:

> *"In promulgation and administration under the Fourteenth Amendment to the United States Constitution and the Constitution of Georgia, Fulton Superior Court Local*

Rule 1000 is unconstitutional in failing to guaranty substantive and procedural due process of law and in denying the equal protection of the laws as being governmental regulation and enactment that is "arbitrarily discriminatory" and vague." (A. 8, 43)

These cases began as landlord rent and tenant property collection actions in various courts in Fulton County, Georgia. Petitioner Elizabeth Fasse (hereinafter "petitioner Elizabeth" or "Elizabeth") sued respondent Patricia Hodgson (hereinafter "respondent Hodgson" or "Hodgson") her former tenant for rents due, damages to the demised estate and additional damages for alleged gross misconduct of respondent Hodgson during the time she leased petitioner

Elizabeth's home in Atlanta, Georgia.

Respondent Hodgson sued petitioner Susan Fasse (hereinafter "petitioner Susan" or "Susan") for the return of certain of her property which tenant respondent Hodgson allegedly left at petitioner Susan's home when she was a tenant there, and respondent Hodgson further claimed that she suffered damages in the nature of wounded feelings because Susan made her leave for not paying the rent.

Petitioner Susan then sued respondent Hodgson for less than one thousand dollars ($1,000.00), allowing credits for all just set offs, for rents allegedly owing her from Hodgson.

Petitioner Elizabeth is petitioner Susan's mother. This relationship is not other wise relevant, as the demised premises were separate pieces of improved real estate some distances apart in

Atlanta, and the petitioners' leases with respondent Hodgson were different contracts.

Through time and the judicial process all of these cases ended up in the Superior Court of Fulton County, Georgia and were consolidated as one by the trial judge on October 2, 1986 (A. 122) and long before these cases were severed, without notice, without requests from the parties or an opportunity to be heard, and referred for non-binding, compulsory and non-jury arbitration under new Fulton County Local Rule 1000 which had been implemented less than seven months before on March 1, 1986 by the Judges of the Superior Court sitting *en banc*, having been approved by the Georgia Supreme Court on October 23, 1985.

These consolidated cases requested damages far in excess of $25,000.00 and

demanded trial by jury.

After petitioner Susan's cases were referred for arbitration separately from petitioner Elizabeth's, although still consolidated as one in the Superior Court, petitioner Susan became very ill. As to the first arbitration setting of October 21, 1988 Susan filed her formal verified written Motion For Continuance with the affidavit exhibit of her treating medical doctor, John A. Shull, (A. 141, 143) showing that she was providentially prevented from attending the arbitration hearing and her counsel certified that he could not safely go to trial without her presence. (A. 141) The court granted the continuance until February 3, 1989. (A. 145) On January 30, 1989 petitioner Susan's conditions of ill being had worsened and she was again required to file through her attorneys Meier and Cassidy her verified written

Motion For Continuance, as before, with the January 30, 1989 affidavit exhibit of her treating physician, Dr. Shull, who explained that his patient, petitioner Susan, had undergone hospital inpatient surgery on December 2, 1988 and that a further medical consultant was being called into the case and that Susan would have to undergo further inpatient surgery *"within the next thirty to sixty days."*, and in the Doctor's opinion petitioner Susan was on January 30, 1989 *"permanently partially disabled and physically and medically unable to participate in any court proceeding until further notice"* from Dr. Shull. (A. 152)

Thereafter petitioner Susan in fact did undergo major inpatient surgery in Chattanooga, Tennessee on February 22, 1989 at Humana Hospital East Ridge while under general anesthesia in excess of

four hours (A. 178, 179) and as a result would be permanently and totally disabled for at least eight weeks and could not thereafter participate in any court proceedings until further notice from her doctors. (A. 180)

Petitioner Susan's January 30, 1989 written and verified Motion For Continuance with affidavit exhibits was personally served and filed upon and with the Clerk of the Superior Court, the Office of Civil Arbitration and opposing counsel on January 31, 1989 by Thomas V. Cassidy, one of Susan's attorneys, (A. 161, 162) and on Wednesday, February 1st, 1989 attorney Cassidy phoned the Fulton County Office of Civil Arbitration and was advised that petitioner Susan's written Motion For Continuance had been received on January 31st, 1989 and that the arbitration scheduled for Friday, February 3rd, 1989 had been continued and

would be reset to another date. (A. 162)

These foregoing facts are set out in some detail but are highly relevant when viewed against what subsequently occurred and measured against the high risk for due process deprivation when the United States Supreme Court minimum requirements for "actual" due process notice are not met.

Notwithstanding the above, the arbitration hearing went ahead on February 3rd, 1989 without petitioner Susan or her attorneys present and without their knowledge. An arbitration award was entered against Susan and in favor of respondent Hodgson in the amount of $51,181.25 plus $10,795.24 in attorney fees, although respondent Hodgson had never timely or properly under Georgia law requested attorney fees in her

pleadings in the Superior Court. (A. 167)

Pursuant to the provisions of, the administration of and promulgation of Fulton County Local Arbitration Rule 1000, and the practice of the Office of Civil Arbitration, no "actual" notice of this award by mailing or other service was ever given to Susan or her attorneys, although their whereabouts were actually known and "reasonably ascertainable". (A. 164) Had petitioner Susan or her attorneys been given due process "actual" notice a simple form "Demand For Trial De Novo" could have been completed and filed with the Office of Civil Arbitration within 30 days of the arbitration awards, and the cases arbitrated would have been once again restored to the Superior Court Fulton County jury trial calendar. (A. 212) Since no "actual" notice was given to petitioner Susan (A. 156) or her

attorneys (A. 159, 161) at any time and she was thus deprived of filing a demand de novo, respondent Hodgson's attorneys after the expiration of thirty (30) days and without notice either before entry or after entry prepared and had signed and entered on March 7th, 1989 a final judgment against petitioner Susan in the amount of the arbitration award. (A. 167) Between March 7th and June 20th, 1989 this judgment was not in the case file of the Clerk of the Superior Court of Fulton County. (A. 162, 163) So bizarre were the facts surrounding this missing judgment from the court's case file that the Clerk of the Superior Court set both petitioner Susan's and petitioner Elizabeth's cases on the April 11th, 1989 Superior Court's jury trial calendar, (A. 170), which prompted and necessitated on April 3rd, 1989 yet another verified and

written Motion For Continuance with attached medical doctor affidavits by Susan because of her on going pathologies and conditions of ill being. (A. 170, 171, 173, 174, 175,) At this point in time of April 3, 1989 the final judgments had been entered against Susan -- March 7, 1989, and petitioner Elizabeth almost a year before on June 6, 1988 (A. 167, 204) without petitioners, their attorneys and seemingly the Superior Court clerk's knowledge.

The facts surrounding the entry of the final judgment against petitioner Elizabeth on an arbitration award of April 1st, 1988 were exactly the same as those attendant to petitioner Susan with no "actual" due process notice of the arbitration award ever being served upon petitioner Elizabeth or her attorneys by mail or personal service when their whereabouts were actually known and

"reasonably ascertainable". In addition, in petitioner Elizabeth's case the record fails to disclose and in fact neither she or her attorneys received any notice of the rescheduled, after once postponed, arbitration hearing of April 1st, 1988. (A. 45, 46) More than thirty (30) days thereafter respondent Hodgson's attorneys without notice to petitioner Elizabeth or her attorneys either before entry or after entry had signed and entered on June 6, 1988, contrary to O.C.G.A., section 15-6-21(c), a final judgment against Elizabeth and in favor of Hodgson upon the April 1st, 1988 arbitration with an award of $5,000.00 of attorney fees which were never timely or properly requested or plead by respondent Hodgson in her pleadings in the Superior Court. (A. 45, 46, 47, 48 and 204) Petitioner Elizabeth's original case filed in the

Superior Court of Fulton County prayed for damages far in excess of the arbitration jurisdictional amount of $25,000.00 and demanded trial by jury.

The questions presented for review in petitioner Susan's and petitioner Elizabeth's appeals before this Court draw into question that same issues: that in promulgation and administration under the Fourteenth Amendment of the United States Constitution, Georgia Fulton Superior Court's, Atlanta Judicial Circuit, Local Rule 1000 is repugnant as being unconstitutional in failing to guaranty substantive and procedural "actual" notice due process of law and thus *"creates a high risk of erroneous due process deprivation"*, and in denying the equal protection of the laws as being governmental regulations and enactments that are "arbitrarily discriminatory" and vague. (A. 16, 43)

Notwithstanding anything else that may have or may not have occurred of a puzzling and unexplained nature in the courts below, the focus here is solely directed to the framework and parameters of the Fulton County, Georgia compulsory, non-binding and non-jury arbitration system in its enactment, promulgation and administration as to whether it meets this Court's minimum due process "actual" notice requirements or fails in doing so thus creating a high risk of due process deprivation which renders it unconstitutional. Further, and within the same focus, framework and parameters are the standards and provisions for the qualification of cases for compulsory arbitration so vague and arbitrarily discriminatory and capricious to render a citizen the loss of his 14th amendment guarantee of equal protection of the

laws. Especially so when coupled vis-a-vis with the failure of Local Rule 1000's due process "actual" notice guarantees.

FULTON COUNTY, SUPERIOR COURT, COMPULSORY, NON-BINDING AND NON-JURY LOCAL ARBITRATION RULE 1000:

How it works: as to the U.S. Constitution 14th amendment due process "actual" notice of an arbitration award which affects property interests.

The only provision for notice of an arbitration award to a party or his\her attorney contained in Local Rule 1000 provides in paragraph 14 that ***"the award is published to the parties, and the written award filed with the Court Administrator or his designee on the day of the hearing."*** (A. 118, 119) In practice, promulgation and administration this "publication" is carried out by posting the award on a bulletin board on the seventh (7th) floor of the Fulton

County court house which area is secured with limited access allowed to the general public, and a copy of the arbitration award is kept in the case file in the private office of the Arbitration Administrator also on the 7th floor of the same court house. The arbitration award is not mailed to the parties; is not mailed to counsel; is not served upon the parties or their counsel of record by the Sheriff's Department; is not published in the county organ and is not published in a Statewide legal organ.

The following uncontroverted July 31st, 1989 affidavit of Fulton County Superior Court Arbitration Administrator Kimberly A. Warden provides the best evidence, both real and direct, of this:

"AFFIDAVIT

GEORGIA, FULTON COUNTY

Personally appeared before me the undersigned authority duly authorized to administer oaths KIMBERLY A. WARDEN who after being sworn on oath deposes and states as follows:

That she is the Arbitration Administrator of the Office of Civil Arbitration, Fulton County Superior Court.

That Local Rule 1000 (14) of the Fulton Superior Court provides in part that the award (of the arbitrators) be published to the parties.

That the method by which the award of the arbitrators is published to the parties consists solely of:

(i) Posting such award on a

bulletin board outside the Court Administrator's Office of the seventh (7th) floor of the Fulton County Courthouse; and

(ii) Keeping a copy of same in the case file in the Office of Civil Arbitration and copies available for all parties;

(iii) That this has been the policy of the office for three years.

That the award of the arbitrators is not mailed to counsel of record or the parties in a case. That such award is not served on the parties or counsel of record by the Sheriff's Department.

That this Affidavit is given from personal knowledge and may be used for any lawful purpose.

This 31 day of July, 1989.

/s/ Kimberly A. Warden

Sworn to and subscribed
before me this 31st
day of July, 1989.

/s/ Myrtle J. Hunt
NOTARY PUBLIC

Notary Public, DeKalb, County, Georgia
My Commission Expires Nov. 17, 1990"

(Emphasis added) (A. 164, 165, 166)

The record is void as to whether even this defective court house 7th floor publication was carried out in these cases. It is not disputed that neither of the petitioners or their counsel of record received any notice of the arbitration awards, (A. 156, 159, 161) and in addition neither petitioner Elizabeth or her attorneys received notice of the rescheduled, once postponed, arbitration of April 1st, 1988. (A. 45, 46)

The Superior Court of Fulton County,

Georgia in its advertising to the general public and the legal community extending the invitation to use the arbitration system does not give the slightest hint or least suggestion that the procedure is anything but voluntary and non-binding and affirmatively represents that any judgment entered pursuant to an arbitration award is only final if all the parties and their counsel of record so consent. Not true! The advertisement also fails to disclose the high risks of due process "actual" notice and equal protection deprivation inherent in the promulgation and administration of the arbitration procedures. If this public dissemination had its source in the private sector it likely would subject the offender to severe governmental sanctions and penalties. (A. 212 thru 217)

If an arbitration award is not

objected to by a party or counsel within thirty (30) days after it is published by the filing of a "Demand For Trial De Novo" with the Arbitration Administrator's Office it becomes a final judgment of the Superior Court. (A. 119, 120) The only place this 30 day cautionary instruction is officially published is in the arbitration award itself. (A. 207, 208, 210, 211) Thus actual notice of the arbitration award is the very essence of a party's protection of his property right against its taking by an adverse judgment.

FULTON COUNTY, SUPERIOR COURT, COMPULSORY, NON-BINDING AND NON-JURY LOCAL ARBITRATION RULE 1000:

How it works: as to the U.S. Constitution 14th amendment guarantee of equal protection of the laws as imposing a limitation on the action of the States

as against government action or regulation that is "arbitrarily discriminatory" in making unreasonable classifications between persons or groups of persons or classifications that are too vague.

Local Arbitration Rule 1000 of Fulton County, Superior Court (Atlanta, Georgia Judicial Circuit) provides:

> "All civil actions filed and seeking primarily money damages of *twenty-five thousand dollars ($25,000.00) or less, or for damages in an unstated amount*, shall be required to go through *compulsory but non-binding* arbitration. . . . *the trial judge* to whom the case has been assigned *may order arbitration at any time at his or her discretion on any case whether or not it otherwise qualifies for arbitration* . . ." (Emphasis added) (A. 212,

213)

These classifications remove jurisdictional control of compulsory arbitration from the court and place it to the whims and artfulness of the pleader to ask for more than $25,000.00 and thus avoid arbitration, and on the other hand a case with a meritorious damage claim of many hundreds of thousands of dollars can on the vague and subjective whim of the trial judge be ordered to arbitration. "Going in" the litigant has no reasonable, non-vague and non-discriminatory criterion and benchmark in which to gauge the classification of his lawsuit.

The Fulton County Superior Court Local Rule 1000 arbitration program is presently unchanged and ongoing and being administered on a daily basis, as a part of the judicial process of the State of

Georgia, with its attendant high risks to due process "actual" notice and equal protection deprivations.

SEVEN

ARGUMENT

A.

On November 7, 1990 the State of Georgia's Supreme Court in these cases has decided a federal question regarding the U.S. Constitution 14th Amendment due process "actual" notice requirements in a way that conflicts with the decisions of this Court in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (70 SC 652) (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (103 SC 2706) (1983) and *Tulsa Professional Collection Services, Inc. v. Pope, Executrix Of The Estate Of Pope*, 485 U.S. 478 (1988) and other cases of this Court, to wit: *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) [*holding that a cause of action is a species of property protected by the 14th Amendment's Due Process Clause.*]; *United Savings Assn. of Texas v. Timbers*

of Inwood Forest Assoc., Ltd., 484 U.S. 365 (1988) [*requiring actual notice in bankruptcy proceedings notwithstanding there is a need for prompt administration of claims.*]; *Greene v. Lindsay*, 456 U.S. 444 (1982) [*recognizing that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice.*]; *Bank of Marin v. England*, 385 U.S. 99 (1966); *City of New York v. New York, N.H. & H.R. Co.*, 344 U.S. 293 (1953) [*holding that Bankruptcy Code's requirement of "reasonable notice" requires "actual" notice of deadline for filing claims.*]; *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978) [*holding that actual notice necessary before termination of utility service.*]; *Schroeder v. City of New York*, 371 U.S. 208 (1962) [*holding that actual notice required in condemnation proceedings.*].

After granting to the petitioners leave for discretionary appeal to its court, the Supreme Court of Georgia ruled valid and constitutional its "State action" due process notice publication provision of the Superior Court of Fulton County, Georgia, Atlanta Judicial Circuit, compulsory, non-binding and non-jury arbitration Local Rule 1000 which only required that notice of an arbitration award, that could affect adversely a person's interest in his property, be published on a bulletin board on the seventh (7th) floor of the court house, which was a secured area with limited access allowed to the general public, and that another copy of the arbitration award be kept in a private office case file of the Civil Arbitration Administrator's office next to that same bulletin board on the same 7th floor of the same court house. The

Georgia Supreme Court ruled, without opinion, that the minimum requirements of 14th amendment due process "actual" notice did not mandate that a copy of the arbitration award be mailed to the parties or their counsel or personally served upon the parties or their counsel when their identity was known or "reasonably ascertainable" and when the results of the arbitration award was not to be published in the county legal organ nor a Statewide legal organ and when no other means to insure "actual" notice were either prescribed or to be undertaken. Local Arbitration Rule 1000 of the Superior Court of Fulton County was the Georgia Supreme Court's own enactment, it having been approved by that court on October 23, 1985, a little over five (5) years before entering its adverse judgment against petitioners,

without opinion. Here the Georgia Supreme Court was in effect ruling on the constitutional efficacy of it own judicial legislation.

Additionally, what makes the Georgia Supreme Court's action in these cases so perplexing and bizarre, is its track record of consistency through the years in striking down Georgia state statutes and enactments that did not follow the rationale and holdings of this Court in *Mullane,* supra, *Mennonite,* supra and *Tulsa*, supra, where there was drawn in question minimum 14th Amendment Due Process "actual" notice requirements. (SEE: A. 54 and 61 thru 80, and 85 thru 97)

As noted, through the years the Georgia Supreme Court has loyally invoked the stare decisis of its past rulings and holdings and purposefully followed its own prior judgments and opinions and

those of the United States Supreme Court on the requisite mandates and guidelines of *"bedrock"* due process "notice" and equal protection from its decision in *Jefferson Fire Insurance Company v. Brackin*, 140 Ga. 637 decided on October 2, 1913, to *Womble v. Commercial Credit Corporation*, 231 Ga. 569 decided on January 8, 1974, to *Thompson v. Lagerquist*, 232 Ga. 75 decided on April 4, 1974, to *Benton v. Modern Finance & Investment Company*, 244 Ga. 533 decided on October 25, 1979, to *Funderburke v. Kellett*, 257 Ga. 822 decided on February 12, 1988, through *Sun v. Jones*, 188 Ga. 552 decided on September 23, 1988.

In *Funderburke*, supra, pursuant to the guidelines of the United States Supreme Court in *Mennonite*, supra, it held a Georgia state statute unconstitutional as not being in accord

with the requirements of due process in only requiring notice publication at the court house and published notice in the county legal organ as to the rights of "a substantial interest in property" of the mortgagee of the property.

Again in ***Sun v. Jones***, supra, pursuant to the guidelines of this Court in ***Mullane***, supra, it held that the minimum requirement of Georgia state "action" for notice is met WITH the service by mail.

In ***Benton***, supra, relying once again on ***Mullane***, supra, and its own rulings in ***Thompson***, supra, and ***Womble***, supra, which both adopted ***Mullane***, supra, the Georgia high court held unconstitutional a state statute as violative of the due process clause of the 14th Amendment to the United States Constitution and as providing for notice not reasonably calculated to reach

interested persons or that the forum chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes, such as mailing.

Here petitioner Susan had an arbitration award by default entered against her in the amount of $61,976.49 plus interest after she had a few days before filed her conforming and legal motion for continuance, supported by the affidavit of her treating physician of her surgeries in Chattanooga, Tennessee, and her counsel was told by the Office of Arbitration that the arbitration had been continued, and then her only notice or that of her counsel of the entry of the default arbitration award in the amount of $61,976.49 plus interest was the alleged posting or "publishing" of it on a bulletin board on the seventh (7th)

floor of the courthouse, a highly secured area with limited access by and to the public, and a copy of the award kept in a desk drawer of the Administrator of the Office of Arbitration on the same limited access seventh (7th) floor of the same courthouse. Neither petitioner Susan or petitioner Elizabeth, who under the same circumstances had an arbitration award of $5000.00 dollars for attorney fees entered against her, received any other notice nor did their counsel, by service at their published of record addresses, either personally or by the usual and customary United States mail methods or any other known or "reasonably calculated" or accepted modes of notice or service "to reach interested parties." Thus the 30 day period expired in which petitioners could have easily cured the matter, but for the notice and service deficiency, by filing their Rule 1000

"Demand For Trial De Novo".

Thereafter, judgments on the default arbitration awards were entered without notice against both appellants, contrary to OCGA 15-6-21(c). It was in June 1989 only after a credit problem arose for petitioner Susan, due to all of this and for the first time in her life, and both petitioners having their bank accounts and savings and loan accounts taken by what only can be described as a hit-or-miss, non-investigatory and "scorched earth" march and siege through the financial community of Atlanta by the filing of over thirty (30) garnishment lawsuits against petitioners in the names of respondent Hodgson and her attorneys *as garnishment plaintiffs, that either of the petitioners or their counsel knew any thing of what had transpired. (R-297-301) (R-302-303) (A. 15) ***[*NOTE:***

respondent Hodgson's attorneys were never judgment creditors.] All of this occurred one (1) year and two (2) months after the offensive judgment had been entered against petitioner Elizabeth and ninety-five (95) days after the offensive judgment had been entered against petitioner Susan, and in the interim period and after the entry of these judgments the petitioners consolidated cases appeared on the April 11th, 1989 Fulton County Superior Court general jury trial calendar and the judgment against petitioner Susan was missing from the file of the clerk of the Superior Court. *(SEE: Statement Of The Case, ante.)*

Is the alleged posting, only, of the arbitration awards on a bulletin board on the seventh (7th) floor of a courthouse, which is secured with limited access to the general public, and the keeping of a copy of the arbitration awards in the

case file cabinet drawer of the private office of the Administrator of Civil Arbitration to which the public, the appellants and their attorneys have no access a practice of and notion of due process that leaves notice to chance and affords no reasonable probability that the petitioner will ever know of the action taken against them except by judgment executions that will deprive each of their property?

Under this state of the art of due process a citizen would be better off casting his lot with the town crier and his brass bell at 8:00 a.m., once a week, on the courthouse steps, or per Rudyard Kipling: ". . . *take one heap of all your winnings and risk them on one turn of 'pitch-and-toss'.*"

For purposes of 28 USC 1257 Fulton

County Superior Court, Atlanta Judicial Circuit, compulsory, non-binding, non-jury arbitration Local Rule No. 1000 is a "State statute" or state action, ***Reinman v. Little Rock, Ark.***, 237 U.S. 171 (1915); ***Sultan Ry. & Timber Co. v. Dept. Labor and Industries of State of Washington***, 277 U.S. 135 (1928); ***Tulsa***, supra, and the Georgia Supreme Court by its judgment order of November 7, 1990 has sustained the validity of Local Rule 1000 when it has been drawn in question on the ground that it is repugnant to the 14th Amendment of the United States Constitution. ***Goodyear Atomic Corp. v. Miller***, 486 U.S. 176 (1987) at page 178.

In view of these authorities by this Court and those discussed of the Georgia Supreme Court the judgments against petitioner Susan and petitioner Elizabeth cannot stand. The State of Georgia's

bulletin board "publication" does not measure up against this Court's minimum 14th amendment due process "actual" notice requirements as held in ***Tulsa***, ***Mullane*** and ***Mennonite***, supra, and is unconstitutional and when coupled with its vagueness and arbitrarily discriminatory unreasonable classifications amongst litigants and their law cases it creates a high risk for due process and equal protection deprivation.

The following examination of ***Tulsa***, supra, adequately covers this Court's reasoning and holdings in ***Mullane*** and ***Mennonite***, supra.

In ***Tulsa***, supra, this Court held the non-claim provision of the Oklahoma Probate Code unconstitutional as failing to require more than publication notice; and further held that state actions that

adversely affect property interests must be accompanied by such notice as is reasonable under the particular circumstances, which generally requires actual notice to an affected party whose name and address was known or "reasonably ascertainable" and the Due Process Clause of the 14th Amendment as interpreted by ***Mullane*** and ***Mennonite***, supra, requires that notice be given by mail or such other means as is certain to insure "actual" notice.

The 5th United States Court of appeals following and citing as controlling ***Mullane***, ***Mennonite*** and ***Tulsa***, supra, in ***Matthias v. Bingley***, 906 F.2d 1047 (5th Cir., 1990), a reasoned opinion, adopts ***Matthews v. Eldridge***, 424 U.S. 319, 321 (1976) and this Court's ***"risk of erroneous deprivation"*** test in holding unconstitutional certain city

ordinances which authorized the disposition of plaintiffs' property, that had been seized as potential evidence in unrelated criminal law enforcement investigations, without adequate 14th amendment due process "actual" notice to the known or reasonably ascertainable "lawful owners".

B.

"Equal protection" is a limitation imposed on the action of State governments by the 14th Amendment which means that State action cannot be "arbitrarily discriminatory" and only reasonable classifications and discriminations between persons or groups of persons are permitted. This is, also, true as to vagueness.

Local Arbitration Rule 1000 of Fulton County, Superior Court (Atlanta,

Georgia Judicial Circuit) provides:

> "All civil actions filed and seeking primarily money damages of *twenty-five thousand dollars ($25,000.00) or less, or for damages in an unstated amount,* shall be required to go through *compulsory but non-binding* arbitration. . . . *the trial judge* to whom the case has been assigned *may order arbitration at any time at his or her discretion on any case whether or not it otherwise qualifies for arbitration* . . . ." (Emphasis added) (A. 212, 213)

These classifications remove jurisdictional control of compulsory arbitration from the court and place it to the whims and artfulness of the pleader to ask for more than $25,000.00 and thus avoid arbitration, and on the other hand a case with a meritorious damage claim of many hundreds of thousands of dollars can on the vague and subjective whim of the trial judge be ordered to arbitration. "Going in" the litigant has no reasonable, non-vague and non-discriminatory criterion and

benchmark in which to gauge the classification of his lawsuit. This creates a high risk of erroneous deprivation as it fails to install any guidelines on the trial judge's exercise of his or her discretion for referral of a case *"whether or not it otherwise qualifies for arbitration."* SEE: *Vick Wo v. Hopkins*, 118 U.S. 589 (1886); *Kevishaian v. Board of Regents*, 386 U.S. 589 (1967); *Trimble v. Gordon*, 430 U.S. 762, 767 (1977) [*striking down section 12 of the Illinois Probate Act which allowed illegitimate children to inherit by intestate succession only from their mothers and which made other "vague" and "arbitrarily discriminatory" classifications between legitimate and illegitimate surviving children of a deceased for purposes of inheritance*]; *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 172 (1972) [*in determining the*

right to death benefits under Louisiana's Worker's Compensation Act as between legitimate and illegitimate surviving children of a decedent, who was killed out of and in the course of his employment, this Court required that, at a minimum, a statutory classification bear some relationship to a legitimate state purpose.] On this question of "equal protection" as the 5th Circuit Court of Appeals noted in ***Matthias***, supra, at page 1052:

> *Third, the ... ordinance ... creates a high risk of erroneous deprivation because it neither establishes nor incorporates any guidelines for satisfying its "good faith" requirement ... for ... locating "lawful owners." The ordinance allows each officer to decide when she [he] has satisfied the good faith requirement. Nothing in the system checks the officer's determination that she [he] cannot notify the owner or need not notify persons with colorable claims.* (Emphasis added)

Further and in relevant part, for

purposes of this discussion, Fulton Superior Court Local Rule 1000 provides:

> *3. The Court Administrator shall schedule and set dates for arbitration hearings . . . not less than 180 days subsequent to filing.* . . .

In contravention of such provision petitioner Susan's and petitioner Elizabeth's cases after being severed for arbitration by the trial court without notice, were first set for arbitration a year and one-half to two and one-half years "subsequent to their filing", which further constitutes a state action and administrative breach of the 14th amendment equal protection guaranteed to these two citizens of the State of Georgia and the United States of America.

CONCLUSION

As set forth above under FOUR: JURISDICTIONAL GROUNDS STATEMENT, (e) and End Note One (1), Petition page 12, if the Court finds that these appeals are appropriate pursuant to former 28 USC 1257 (b), it is prayed that the judgment of the Supreme Court of Georgia against petitioner Susan Fasse and petitioner Elizabeth Fasse be reversed as being premised upon state action which is unconstitutional as being repugnant to the 14th Amendment, Section 1, of the United States Constitution and that petitioners, and each of them, have judgment in their favor and against respondent Patricia Hodgson together with their respective costs and expenses of litigation; or otherwise that an order be entered by this court directing writs of certiorari to issue to the Supreme Court of the State of Georgia, and that

thereafter the judgment of the Supreme Court of Georgia against petitioner Susan Fasse and petitioner Elizabeth Fasse be reversed as being premised upon state action which is unconstitutional as being repugnant to the 14th Amendment, Section 1, of the United States Constitution and that petitioners, and each of them, have judgment in their favor and against respondent Patricia Hodgson together with their respective costs and expenses of litigation.

Respectfully Submitted:

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404/237-0494

February 4, 1991
Atlanta, Georgia

END NOTES

1. The offensive judgment against petitioner Elizabeth Fasse was entered nisi prius by the Superior Court of Fulton County, Georgia on March 6, 1988 (A. 204) which is prior to the amendatory effective date of new 28 USC 1257 (a) [effective date September 25, 1988]. Section 7 of the Supreme Court Selections Act (Public Law 100-352) provides that the amendments do not apply to cases pending in the U.S. Supreme Court on the effective date, or to any judgment of a court "entered" before the effective date of September 25, 1988. Counsel for petitioners has interpreted this to mean the judgments of a highest State court of resort, and not the entry of "any" judgment in a State's lower court. The Georgia Supreme Court judgments against petitioners were entered on October 17, 1990, which was over two (2) years after the effective date of new 28 USC 1257 (a). For this reason counsel for petitioner Susan and petitioner Elizabeth has proceeded under new 28 USC 1257 (a) and presents these petitioners' cases to this Court as applications for writs of certiorari. If counsel's assumption in this regard, and after skillful and diligent legal research and investigation, is in good faith mistakenly taken from the decision of the highest court of the State of Georgia, it is requested that petitioner Susan's and petitioner Elizabeth's appeals be regarded as "direct" appeals pursuant to former 28 USC 1257 (b), where there has been drawn into question the validity of a statute or State action of the State of Georgia on the grounds of its being repugnant to the Constitution of the

United States, and the decision was in favor of its validity, and that petitioners' application for writ of certiorari be regarded as their BRIEF ON THE MERITS pursuant to this Court's rule 25. Trusting this pleases the Honorable Court, it is respectfully submitted: Thomas V. Cassidy, attorney for petitioners.

90-1258

Supreme Court, U.S.
FILED
FEB 4 1991
OFFICE OF THE CLERK

No. _____

In the SUPREME COURT of the UNITED STATES

October Term 1990

SUSAN J. FASSE and ELIZABETH FASSE,
PETITIONERS.

v.

PATRICIA HODGSON, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE STATE OF GEORGIA SUPREME COURT

APPENDIX

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Atlanta, November 07, 1990

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Case No. S90A0816 & Case No. 590A0817

SUSAN FASSE V. PATRICIA B. HODGSON

ELIZABETH FASSE V. PATRICIA B. HODGSON

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia. Witness my signature and the seal of said court affixed the day and year last above written.

Joline B. Williams, Clerk.

United States Court of Appeals

Tenth Circuit

In the Supreme Court of Georgia

Decided; Oct. 17, 1990

S90A0816. FASSE V. HODGSON

S90A0817. FASSE V. HODGSON

PER CURIAM.

Judgment affirmed without opinion pursuant to Rule 59.

All the Justice concur.

SUPREME COURT OF GEORGIA

Atlanta: Nov. 14, 1990

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

BY: Benham, J.

The following direction was given:

S90A0816. Susan Fasse v. Patricia B. Hodgson

S90A0817. Elizabeth Jane Fasse v. Patricia B. Hodgson

Upon consideration of the motion for a stay of this court's remittitur in order that an appeal or an application for certiorari may be filed in the Supreme Court of the United States to obtain a review of this court's judgment rendered in this case on November 7, 1990 such motion is hereby

granted, subject to the following conditions:

1) The clerk of this court is directed to withhold the transmittal of such remittitur to the trial court for ninety days from the date of this court's judgment.

2) The clerk of this court is directed to transmit such remittitur to the trial court not later than the ninety-fifth day from the date of his court's judgment, provided that the clerk shall continue to withhold the transmittal of such remittitur if the clerk is notified in writing that an appeal or application for certiorari has been timely filed in the Supreme Court of the United States. Upon the timely filing of such appeal or application in the Supreme Court of the

United States, the clerk is directed to withhold the transmittal of such remittitur until the final disposition of the case by that court.

Justice Robert Benham

SUSAN FASSE,	)
	)
Appellant,	)
	)
	)
vs.	)
	)
PATRICIA B. HODGSON,	)
	)CASE
Appellee.	)No.
	)S90A0816

ENUMERATION OF ERRORS
BRIEF OF APPELLANT

SUBMITTED BY:

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IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

SUSAN FASSE,	)	
	)	
Appellant,	)	
	)	
	)	
vs.	)	CASE
	)	No.
PATRICIA B. HODGSON,	)	S90A0816
	)	
Appellee.	)	
	)	

ENUMERATION OF ERRORS

I.

The trial court erred in not granting Appellant's Motion to Set Aside since Appellant did not have notice of the final judgment.

II.

The trial court erred in not granting Appellant's Motion To Set Aside because the manner of publishing the award of the arbitrators pursuant to Fulton County Superior Court Local Rule 1000

is insufficient to satisfy due process of law requirements.

III.

In promulgation and administration under the Fourteenth Amendment to the United States Constitution and the Constitution of Georgia, Fulton Superior Court Local Rule 1000 is unconstitutional in failing to guaranty substantive and procedural due process of law and in denying the equal protection of the laws as being governmental regulation and enactment that is "arbitrarily discriminatory" and vague.

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IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

SUSAN FASSE,	)	
	)	
Appellant,	)	
	)	
	)	
vs.	)	CASE
	)	No.
PATRICIA B. HODGSON,	)	S90A0816
	)	
Appellee.	)	

BRIEF OF APPELLANT

FACTS

The facts herein are simple, direct and not in conflict.

On August 4, 1988 the Honorable Clarence Cooper, then Judge of the Fulton Superior Court, entered an Order for Arbitration herein which was filed on August 11, 1988. (R-254).

On August 29, 1988 a notice of the scheduling of arbitration for October 21, 1988 was sent to appellant's

counsel of record.

Appellant was seriously ill and suffering from various pathologies. On October 17, 1988 she filed her Motion for Continuance Arbitration and Civil Litigations seeking a continuance from the arbitration scheduled for October 21, 1988. (R-256).

On October 20, 1988 Judge Cooper signed an order granting such continuance, such order being filed on November 28, 1988. Such order re-set the arbitration for February 3, 1989. (R-260)

Appellant was still seriously ill and unable to attend or participate in an arbitration and on January 31, 1989 she filed her Motion for Continuance from the February 3, 1989 arbitration. The required affidavit of her treating

physician was attached to such motion as was the affidavit of her counsel stating that he could not safely go to trial without her being present. (R-261). No objection was filed to such motion by Appellee.

Her counsel contacted the Office of Civil Arbitration on February 1, 1989 and was told that the said motion had been received, the arbitration continued and that same would be re-set to another date (R-300-301).

No further action of record was taken on her said Motion for Continuance; however the arbitration was held on February 3, 1989 without Appellant's knowledge and without the presence of Appellant or her counsel.

On February 3, 1989 the arbitrators awarded Appellee the sum of $61,976.49

against Appellant. (R-266). The award was allegedly "published to the parties" pursuant to Local Rule 1000.

The method of publication of the award used by the Office of Civil Arbitration pursuant to Fulton Superior Court Local Rule 1000 is limited to:

(i) Posting such award on a bulletin board outside the Court Administrator's office on the seventh (7th) floor of the Fulton County Courthouse, and

(ii) Keeping a copy of such award in the case file in the Office of Civil Arbitration. (R-302-303).

The award of the arbitrators is not mailed to counsel of record or the parties in a case. The award is not

served on the parties or counsel of record by the Sheriff's Department. (R-302-303).

Neither Appellant nor her counsel received notice of such award (R-297-301), did not know that the arbitration had even taken place and therefore filed no demand for trial within thirty (30) days thereof.

On March 7, 1989 with no notice of any kind to Appellant or her counsel, Appellee secured Judge Cooper's signature on judgment awarding Appellee $61,976.49 against Appellant. (R-267).

No notification of any kind was given to counsel for Appellant (or to Appellant herself) of the entry of such judgment as required by O.C.G.A. Section 15-6-21(c). (R-297-301).

Appellant thus had no notice of such judgment until she was confronted with it in connection with a credit application at her bank on or about June 10, 1989, some ninety five (95) days following entry of the judgment. (R-297-298).

Appellant contends that the trial court erred in denying her Motion to Set Aside the March 7, 1989 judgment for the following reasons:

(i) The trial court failed to notify her counsel of the entry of the March 7, 1989 judgment as required by O.C.G.A. Section 15-6-21(c) and she had no actual knowledge of same until some ninety five (95) days thereafter.

(ii) The notice of award provisions of Fulton Superior Court Local Rule 1000 violate the Due Process

Clause of the United States and Georgia Constitutions.

(iii) In promulgation and administration under the Fourteenth Amendment to the United States Constitution and the Constitution of Georgia, Fulton Superior Court, Local Rule 1000 is unconstitutional in failing to guaranty substantive and procedural due process of law and in denying the equal protection of the laws as being governmental regulation and enactment that is "arbitrarily discriminatory" and vague.

ARGUMENT OF LAW

I.

APPELLANT'S MOTION TO SET ASIDE SHOULD HAVE BEEN GRANTED BECAUSE THE TRIAL COURT FAILED TO NOTIFY COUNSEL FOR APPELLANT OF THE ENTRY OF JUDGMENT AS REQUIRED BY O.C.G.A. Section 15-6-21(c).

O.C.G.A. Section 15-5-21(c) requires the trial court to notify counsel for the losing party of the entry of judgment against such party. Such Code section has been the law in Georgia for almost 100 years.

The record is clear and uncontroverted that no such notification was given to counsel for Appellant. (R-297-301, 334).

Recent Georgia law is replete with cases requiring that a Motion To Set Aside be granted where no notice of the entry of judgment is sent by the trial court or by the clerk to counsel for the losing party.

The landmark case on such issue is Cambron s. Canal Insurance Company, 246 Ga. 147, 269, S.E.2d 426 (1980).

In Cambron, supra at p. 428, his Court stated as follows:

"But where no notice is sent by the trial court or by the clerk to the losing party, this court holds that an action may be brought under Code Ann. Sec. 81A-160(g) [now O.C.G.A. Section 9-11-60(d)] to set aside the earlier judgment; and upon a finding that notice was not provided as required by Code Ann. 24-2620 [now O.C.G.A. Section 15-6-21(c)], the motion to set aside may be granted, the judgment re-entered, and the thirty day period within which the losing party must appeal will begin to run from the date of the re-entry." (Emphasis added).

Even though the lack of notice of the judgment issue was raised by Appellant

in the trial court, (R-282), no specific ruling was made thereon. The record is clear however that the required notice was not given and in fact Appellee contended that no such notice was even required. (R-297-301, 334).

Cambron, supra, has been expressly followed or cited with approval in numerous cases in the Georgia Court of Appeals since it was handed down. Jefferson-Pilot Fire & Casualty Company vs. Combs, 166 Ga. App. 274, 304 S.E.2d 448, 449 (1983); Atlantic-Canadian Corporation vs. Hammer, Siler, George Associates, Inc., 167 Ga. App. 257, 306 S.E.2d 22, 23 (1983); Barthell vs. State, 174 Ga. App. 459, 330 S.E.2d 180, 181 (1985); Colonial Stores, Inc. vs. Hambrick, 176 Ga. App. 544, 336

S.E.2d 617, 618 (1985); Robinson vs. Kemp Motor Sales, Inc., 185 Ga. App. 492, 364 S.E.2d 623, 624 (1988); Willis vs. State, 189 Ga. App. 404, 377 S.E.2d 552 (1988).

The only case not completely following Cambron, supra, is Crawford vs. Kroger Company, 183 Ga. App. 836, 360 S.E.2d 274 (1987), Beasley, Judge, dissenting. In Crawford, supra, at p. 275, summary judgment was announced against Crawford from the bench in open court, at a hearing on such motion. Crawford filed a motion to "reopen" the case 59 days thereafter which was denied. The Georgia Court of Appeals apparently held that actual notice of the judgment received by the judgment being announced in Crawford's presence in open court by the trial judge was

sufficient compliance with O.C.G.A. Section 15-6-21(c). There is of course no evidence whatsoever that any actual notice of any kind was received by Appellant herein or her counsel. (R-297-301).

The theory and logic of the requirement of notice set forth in O.C.G.A. Section 15-6-21(c) vis-a-vis a timely appeal is set forth in one sentence of Judge Beasley's dissenting opinion in Willis v. State, 186 Ga. App. 197, 366 S.E.2d 778, 781 (1988), as follows:

> A losing party cannot be expected to file a notice of appeal within 30 days if he does not have notice of the decision. (Emphasis added.)

Judge Beasley's dissent in Willis, supra, was adopted by this Court's

Order on certiorari in Willis (case no. 45592) remanding the case to the trial court with direction that an out-of-time appeal motion be granted. Willis vs. State, 189 Ga. App. 404, 377 S.E.2d 552 (1988), supra.

Lastly Appellant notes that Appellee cited Jordan vs. Caldwell, 229 Ga. 343, 344, 191 S.E.2d 530 (1972) in her Response To [Appellant's] Application for Discretionary Appeal herein in support of her contention that Appellant was not entitled to have this appeal heard because "appellant failed to file an appeal within 30 days after the entry of the judgment on the arbitration". (See Appellee's Response to [Appellant's] Application for Discretionary Appeal pgs. 3-4). Appellee has apparently failed to

notice that Cambron, supra at p. 428 expressly overruled Jordan, supra, to the extent Jordan, supra, was "inconsistent with this (Cambron) holding." There is no question that where notice of judgment has not been given as required by O.C.G.A. Section 15-6-21(c), Jordan, supra, has been overruled by and supplanted by Cambron, supra.

The Motion to Set Aside should have been granted.

II.

THE NOTICE OF AWARD PROVISIONS OF FULTON SUPERIOR COURT RULE 1000 DO NOT PROVIDE FOR ACTUAL NOTICE AND THEREFORE VIOLATE THE DUE PROCESS CLAUSE OF THE UNITED STATES AND GEORGIA CONSTITUTIONS.

The procedure set forth in Cambron, supra, results in the March 7, 1989 judgment being set aside and then re-entered, with the 30 day appeal period

commencing upon the re-entry date. In other words the application of Cambron, supra, takes us back in time to March 7, 1989 with a judgment in place as of that date with all appeal rights intact.

In most cases such procedure would be sufficient to resolve this appeal. Appellant contends however that no such judgment should have been granted at all because the method used to publish the award of the arbitrators pursuant to Fulton Superior Court Local Rule 1000 is insufficient to give such notice of the award as is required to satisfy due process of law requirements, as set forth below.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 1 of

the Georgia Constitution require that a person's interest in property not be taken without due process of law.

The method of publishing the award of the arbitrators set forth above fails to satisfy the requirement of due process and a reversal of the trial court's decision appealed herein is necessary and proper.

The issue herein is controlled by three significant United States Supreme Court decisions which make it clear that actual notice of the award rather than posting it on a bulletin board is required. Mullane vs. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); Mennonite Board of Missions vs. Adams, 462 U.S. 791 (1983) and Tulsa Professional Collection Services, Inc. vs. Pope, 485 U.S. 478 (1988). See

also Hollis v. Tanner, 177 Ga. App. 759, 341 S.E.2d 291, 292 (1986).

In Mulane, supra, the Supreme Court held that notice by publication of a notice to settle the accounts of a common trust fund was not sufficient to inform beneficiaries of the trust whose names and addresses were known. The Court noted at p. 314 as follows:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (Emphasis added.)

The significance of the notice of award provision of Fulton Superior Court Local Rule 1000 is of course that unless a demand for trial is made within thirty (30) days of the award of the arbitrators a waiver of trial results and a judgment may be entered. Without adequate notice of the award Appellant cannot logically be expected to file her demand for trial on a timely basis. Her due process rights were thus violated by the lack of proper notice.

In Mennonite, supra at p. 800, the United States Supreme Court in a case involving notice by publication of a tax sale of real property, resolved the issue of sufficiency of notice provisions when it held as follows:

> Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will affect the liberty or property interests of any party, . . .if its name and address are reasonably ascertainable. (Emphasis added.)

The third decisive United States Supreme Court case, Tulsa Professional, supra, is the most recent case on the issue and presents a virtual textbook study on notice requirements.

Tulsa Professional, supra, involved notice by publication (as opposed to actual notice) of commencement of probate proceedings and the barring of creditors' claims not presented within two (2) months after such publication.

The Syllabus in Tulsa Professional, supra at p. 478, provides a sentence which perfectly sets forth Appellant's position on this appeal, as follows:

> HELD: If appellant's identity as a creditor was known or 'reasonably ascertainable' by appellee . . .the Due Process Clause of the Fourteenth Amendment, as interpreted by Mullane and Mennonite, requires that appellant be given notice by mail or such other means as is certain to ensure actual notice. (Emphasis added.)

The within case fits the requirements for actual notice set forth in Mulane, Mennonite and Tulsa Professional, supra. The identities of Appellant and her counsel were certainly known as were their addresses. Service by mail

pursuant to O.C.G.A. Section 9-11-5 had been accomplished with all other pleadings in the case. As stated in Tulsa Professional, supra at p. 490, "We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice."

Mulane, Mennonite and Tulsa Professional, supra, make it mandatory that this Court reverse the trial court and set aside the judgment. Publishing the award of the arbitrators on a bulletin board in the Courthouse without sending a copy of same to a party or his counsel by mail or otherwise simply does not pass the test of our Constitutional due process actual notice requirements.

III.

IN PROMULGATION AND ADMINISTRATION UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF GEORGIA, FULTON SUPERIOR COURT LOCAL RULE 1000 IS UNCONSTITUTIONAL IN FAILING TO GUARANTY SUBSTANTIVE AND PROCEDURAL DUE PROCESS OF LAW AND IN DENYING THE EQUAL PROTECTION OF THE LAWS AS BEING GOVERNMENTAL REGULATION AND ENACTMENT THAT IS "ARBITRARILY DISCRIMINATORY" AND VAGUE.

A.

As set forth hereinabove Local Rule 1000 is constitutionally fatally defective as to substantive and procedural due process by reason of the failure of its notice of award provisions to provide actual notice of the award. Tulsa Professional, supra.

In comparison, the Illinois non-binding arbitration rules adopted by its Supreme Court (Rules 92 and 94) require notice which would seem to be more in line with the "actual notice"

guidelines of Tulsa Professional, Mennonite, and Mulane, supra. Such Rules are as follows:

> Illinois Supreme Court Rule 92. Award and Judgment on Award
>
> (b) Determining an Award. The panel shall make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief. The award may not exceed the sum of $15,000.00, exclusive of interest and costs. The award shall be signed by the arbitrators or the majority of them. A dissenting vote without further comment may be noted. Thereafter, the award shall be filed immediately with the clerk of the court, who shall serve notice of the award, and the entry of the same on the record, to other parties,

including any in default. (Emphasis added.)

Illinois Supreme Court Rule 94. Form of Oath, Award and Notice of Award.

"NOTICE OF AWARD"

"On the _____ day of _____, 19___, the award of the arbitrators dated _____, 19___, a copy of which is attached hereto, was filed and entered of record in this Cause. A copy of this NOTICE has on this date been sent by regular mail, postage prepaid, addressed to each of the parties appearing herein, at their last known address, or to their attorney of record.

Dated this _____ day of _____, 19_____.

_____
Clerk of the Circuit Court"
(Emphasis added.)

The difference between Local Rule 1000's publication of notice of the award of the arbitrators and the actual notice requirement contained in the Illinois Rules is clear and obvious. Local Rule 1000's provisions simply do not provide the actual notice required by the United States Supreme Court cases cited hereinabove and is sorely lacking as to actual due process.

B.

"Equal Protection" is a limitation imposed on the action of state government by the Fourteenth Amendment which means that government regulation cannot be "arbitrarily discriminatory" and only reasonable classifications and discriminations between persons or groups of persons are permitted. Similarly, this is true as to

vagueness. Vick Wo vs. Hopkins, 118 U.S. 346 (1886); Kevishaian vs. Board of Regents, 386 U.S. 589 (1967); Trimble vs. Gordon, 430 U.S. 762 (1977) [striking down a workers compensation law in Illinois which made "vague" and "arbitrarily discriminatory" classifications between legitimate and illegitimate surviving children of a deceased for purposes of death benefits.]

In relevant part, for purposes of this discussion, Fulton Superior Court Local Rule 1000 provides:

> 1. All civil actions filed and seeking primarily money damages of twenty-five thousand dollars ($25,000.00) or less, or for damages in an unstated amount, shall be required to go through compulsory but

non-binding arbitration. . .The trial judge to whom the case has been assigned may order arbitration at any time, at his or her discretion, on any case whether or not it otherwise qualifies for arbitration . . .(Emphasis added.)

The foregoing leaves the qualification for arbitration to the whims and artfulness of the pleader as to whether to ask for $25,000.00 and thus qualify for arbitration or $25,001.00 and not qualify for arbitration. On the other hand if the trial judge upon vague or unwritten standards determines that a case with a three million dollar request for damages will be sent to arbitration, the judge may do so on his own motion. Such rule is "arbitrarily

discriminatory" and too "vague" to meet the requirements of Fourteenth Amendment equal protection. In the two appeals now before this court, (Case No. S90A016 and Case No. S90A017) such cases had been consolidated by order of the trial court; however the trial court without notice and without any hearing then severed the cases and ordered them to arbitration separately, even though the requests for damages of each case far exceeded the $25,000.00 limitation.

As now promulgated and administered the litigants and their attorneys are confronted with vagueness and arbitrary discrimination as to whether or not a given case is subject to arbitration.

Further and in relevant part, for purposes of this discussion, Fulton Superior Court Local Rule 1000 provides

> 3. The Court Administrator shall schedule and set dates for arbitration hearings . . .not less than 180 days subsequent to filing. . .(Emphasis added.)

In contravention of such provision the cases on appeal herein after being severed for arbitration by the trial court without notice, were first set for arbitration a year and one-half to two and one-half years "subsequent to [their] filing", which constitutes an administrative breach of equal protection guaranteed to citizens of Georgia.

CONCLUSION

It is respectfully requested that this Court reverse the judgement of the trial court and enter judgment in favor of the Appellant and against the Appellee and that Appellant have her costs and expenses. Publishing the award of arbitration on the seventh floor of the courthouse without delivery of or mailing of a copy of same to a party or his attorney, when known or reasonably ascertainable, does not pass the test of our Constitutional due process actual notice requirements.

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IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

ELIZABETH JANE FASSE,	)
	)
Appellant,	)
	)
	)
vs.	)
	)
PATRICIA B. HODGSON,	)
	)CASE
Appellee.	)No.
	)S90A0817

ENUMERATION OF ERRORS
BRIEF OF APPELLANT

SUBMITTED BY:

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IN THE SUPREME COURT OF GEORGIA
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ELIZABETH JANE FASSE,	)	
	)	
Appellant,	)	
	)	
	)	
vs.	)	CASE
	)	No.
PATRICIA B. HODGSON,	)	S90A0817
	)	
Appellee.	)	
	)	

ENUMERATION OF ERRORS

I.

The trial court erred in not granting Appellant's Motion to Set Aside since Appellant did not have notice of the final judgment.

II.

The trial court erred in not granting Appellant's Motion To Set Aside because the manner of publishing the award of the arbitrators pursuant to Fulton County Superior Court Local Rule 1000

is insufficient to satisfy due process of law requirements.

III.

In promulgation and administration under the Fourteenth Amendment to the United States Constitution and the Constitution of Georgia, Fulton Superior Court Local Rule 1000 is unconstitutional in failing to guaranty substantive and procedural due process of law and in denying the equal protection of the laws as being governmental regulation and enactment that is "arbitrarily discriminatory" and vague.

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ELIZABETH JANE FASSE,	)	
	)	
Appellant,	)	
	)	
	)	
vs.	)	CASE
	)	No.
PATRICIA B. HODGSON,	)	S90A0817
	)	
Appellee.	)	

BRIEF OF APPELLANT

Comes now ELIZABETH JANE FASSE, Appellant by and through her counsel of record and files her brief herein, respectfully showing the Court as follows:

FACTS

On September 29, 1987 the Honorable Clarence Cooper, then Judge of the Fulton Superior Court, entered an Order for Arbitration herein which was filed on September 30, 1987. (R-75).

On November 23, 1987 Judge Cooper's Order consolidating this case with Susan Fasse vs. Patricia B. Hodgson, Case No. D-14463 (Case No. S90A0816 in this Court) was filed. (R-76). Appellant's counsel was not notified of such arbitration hearing.

The arbitration was ultimately rescheduled to April 1, 1988 by Judge Cooper's order of March 9, 1988, entered on March 10, 1988. (R-114).

On April 1, 1988 the arbitration was held without the presence of Appellant or her counsel. The arbitrators awarded Appellee $5,000.00 attorney's fees against Appellant. (R-115). The award of the arbitrators was allegedly published to the parties pursuant to Fulton Superior Court Local Rule 1000 by publishing same on a

bulletin board outside the Court Administrator's office on the seventh (7th) floor of the Fulton County Courthouse and by keeping a copy of such award in the case file in the Office of Civil Arbitration.

The award of the arbitrators was not mailed to counsel of record in the case nor was the award served on counsel or the parties by the Sheriff's Department.

Therefore neither Appellant nor her counsel received notice of such award and therefore filed no demand for trial within thirty (30) days thereof.

On June 6, 1988, with no notice of any kind to Appellant or her counsel, Appellee secured Judge Cooper's signature on a judgment awarding

Appellee $5,000.00 attorney's fees against Appellant. (R-116).

No notification of any kind was given to counsel for Appellant of the entry of such judgment as required by O.C.G.A. Section 15-6-21(c).

Appellant contends that the trial court erred in denying her Motion to Set Aside the June 6, 1988 judgment for the following reasons:

(i) The trial court failed to notify her counsel of the entry of the June 6, 1988 judgment as required by O.C.G.A. Section 15-6-21(c).

(ii) The notice of award provisions of Fulton Superior Court Local Rule 1000 violates the Due Process Clause of the United States and Georgia Constitutions.

(iii) In promulgation and administration under the Fourteenth Amendment to the United States Constitution and the Constitution of Georgia, Fulton Superior Court Local Rule 1000 is unconstitutional in failing to guaranty substantive and procedural due process of law and in denying the equal protection of the laws as being governmental regulation and enactment that is "arbitrarily discriminatory" and vague.

ARGUMENT OF LAW

Appellant hereby adopts and incorporates herein by reference the Statement of Facts and Argument of Law set forth in the Brief of Appellant Susan Fasse in Georgia Supreme Court Case No. S90A0816, styled Susan Fasse, Appellant vs. Patricia B. Hodgson,

Appellee, filed contemporaneously herewith, same being a companion case hereto, the two cases having been originally consolidated in the trial court.

CONCLUSION

It is respectfully requested that this Court reverse the judgment of the trial court and enter judgment in favor of the Appellant and against the Appellee and that Appellant have her costs and expenses. Publishing the award of arbitration on the seventh floor of the courthouse without delivery of or mailing of a copy of same to a party or his attorney, when known or reasonably ascertainable, does not pass the test of our Constitutional due process actual notice requirements.

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IN THE SUPREME COURT OF GEORGIA
STATE OF GEORGIA

SUSAN J. FASSE and ELIZABETH JANE FASSE,	)
Appellants,	)NO. S90A0816
vs.	)No. S90A0817
PATRICIA B. HODGSON,	)
Appellee.	)Consolidated

RULE 47:

MOTION FOR RECONSIDERATION
and
PETITION FOR REHEARING

SUBMITTED BY:

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RULE 47

MOTION FOR RECONSIDERATION
and
PETITION FOR REHEARING

Pursuant to Rule 47 Appellants timely requests the Court to reconsider its judgment order dated October 17, 1990 affirming without opinion the judgments of the Superior Court of Fulton County (attached hereto) and shows the Court:

1.

Pursuant to 28 U.S.C.A. sec. 1257 et. seq. these appeals have "drawn into question" the constitutionality and validity of so called compulsory but non-binding Civil Arbitration Local Rule 1000 of the Fulton County, Georgia, Superior Court on the ground that it is repugnant to the Fourteenth (14th) Amendment of the United States Constitution and that this court's

decisions herein of October 17, 1990, without opinion, is in favor of its validity on the issue of adequate due process "notice" and the equal protection of the laws.

Throughout the years this court has consistently and loyally invoked the stare decisis of its past rulings and holdings and steadfastly, loyally, unwaveringly and purposefully followed is own prior judgments and opinions and those of the United States Supreme Court on the requisite mandates and guidelines of "bedrock" "notice" due process and equal protection from Jefferson Fire Insurance Company v. Brackin, 140 Ga. 637 decided on October 2, 1913, to Womble v. Commercial Credit Corporation, 231 Ga. 569 decided on January 8, 1974, to

Thompson v. Lagerquist, 232 Ga. 75 decided on April 4, 1974, to Benton v. Modern Finance & Investment Company, 244 Ga. 533 decided on October 25, 1979, tc Funderburke v. Kellett, 257 Ga. 822 decided on February 12, 1988, through Sun V. Jones, 188 Ga. 552 decided on September 23, 1988, emanating from this court, and Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (70 SC 652) (1949), Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (103 SC 2706) (1983), Tulsa Professional Collection Services, Inc. v. Pope, Executrix of the Estate of Pope, 485 U.S. 478 (1988) emanating from the U.S. Supreme Court.

That is until now and in these appeals where this court has sustained the Constitution of the United States

due process and equal protection validity, without opinion, of compulsory but non-binding Civil Arbitration Local Rule 1000 of the Fulton County, Georgia, Superior Court which as to "notice" of an arbitration award provides:

Local Arbitration Rule 1000

Rule 14.

> The award is published to the parties, and the written award filed with the Court Administrator or his designee on the day of the hearing. (R-301-303).

And published by rule and custom as follows:

(i) - Posting such award on a bulletin board outside the Court Administrator's Office on the seventh

(7th) floor of the Fulton County Courthouse, and

(ii) Keeping a copy of such award in the case[s] file[s] in the Office of Civil Arbitration. (R-302-303).

And as to equal protection provides:

Local Arbitration Rule 1000

Rule 1.

All civil actions filed and seeking primarily money damages of twenty five thousand dollars ($25,000) or less, or for damages in an unstated amount, shall be required to go through compulsory but <u>non-binding</u> arbitration. . . .The trial judge to whom the case has been assigned may order arbitration at any time, at his or her discretion, on any case whether or not it otherwise qualifies for

arbitration. . . .(N.B.: It is binding at least under the facts and circumstances as memorialized in these actions appeal due to the failure of due process "notice".) (Emphasis added.)

Thus this Motion For Reconsideration and Petition For Rehearing, and, respectfully the court is requested to consider the following:

For purposes of 28 U.S.C.A., sec. 1257 et seq. Fulton County Superior Court, Atlanta Judicial Circuit, compulsory but non-binding arbitration Local Rule No. 1000 is a "State statute" or state action, Reinman v. Little Rock, Ark., 237 U.S. 171 (1915); Sultan Ry. & Timber Co. v. Dept. Labor and Industries of State of Washington, 277 U.S. 135 (1928); Tulsa Professional

Collection Services, Inc. v. Pope, Executrix of the Estate of Pope, 485 U.S. 478 (1988) and this court by its judgment order of October 17, 1990 (attached) has sustained the validity of Local Rule 1000 when it has been drawn in question on the ground that it is repugnant to the 14th Amendment of the United States Constitution and this court's decision is in favor of its validity, Goodyear Atomic Corp. v. Miller, 486 U.S. 176 (1987) at page 178:

> [A] state statute is sustained within the meaning of section 1257 [sic. 28 U.S.C.A., sec. 1257 et. seq.] when a state court holds it applicable to a particular set of facts as against the contention that such application is invalid on federal grounds. Japan

Line, Ltd. v. County of Los Angeles, 441 U.S. 434, 441 (1979).

The decision and judgment of this court of October 17, 1990 in sustaining and upholding Local Rule 1000 as valid when it has been drawn in question on the ground that it is repugnant to the 14th Amendment of the United States Constitution is final. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 482-483 (1975).

In these cases this court granted appellants' Rule 25 (a) [OCGA 5-6-35] applications for discretionary appeal on the grounds that (1) Reversible error appears to exist, or (2) The establishment of a precedent is desirable and then affirmed the judgments of the court below without opinion pursuant to Rule 59 and the

record would suggest on the grounds of Rule 59 (2), as the evidence that would have supported the granting of the Rule 25 (a) applications was one and the same as the evidence on review in the record on appeal in these cases -- Rule 59 (1) -- and the final judgments appealed from are totally devoid and lacking of any explanation of the decisions of the court below - Rule 59 (3).

2.

This court in Funderburke v. Kellet, 257 Ga. 822 (February 12, 1988) pursuant to the guidelines of the United States Supreme Court in Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (103 SC 2706) (1983) held OCGA 48-4-46 (b) and (c) unconstitutional as not being in accord with the

requirements of due process in only requiring notice publication at the court house and published notice in the county legal organ as to the rights of "a substantial interest in property" of the mortgagee of the property.

In relevant part this court's opinion in Funderburke, supra at pages 822, 823, 824:

"Gregory, Justice.

The appellees sold a parcel of property located in DeKalb County to Annette Johnson, taking back a promissory note and deed to secure debt with a power of sale. Appellees are residents of Fulton County. Thereafter the property was sold for taxes and tax deeds ultimately to appellant Funderburke. No notice was given to the appellees of the tax

sales or of their right to redeem the property. Notice of the foreclosure of the right to redeem was published in the Decatur-DeKalb News era in August and September of 1983. Appellees first learned of the tax sales in 1986 and tendered the redemption price. This was refused on the ground that appellees' right to redeem the property had been foreclosed by their failure to take timely action in response to the published notice. Appellees filed this action to quiet title, tendering funds equivalent to the redemption price into the registry of the court. The issues were tried before a special master who concluded that OCGA 48-4-46, governing the requirements of notice of foreclosure

of the right to redeem property sold at a tax sale, does not comport with due process. The special master concluded that the right of the appellees to redeem the property had not been foreclosed, and that tile should be vested in them. The superior court adopted the findings and conclusions of the special master and made them the order of the court.

1. Under OCGA 49-3-9 (a) the record owner of property to be sold at a tax sale is entitled to notice of the sale by either personal service or by registered or certified mail. Under subsection (b), an owner of the security deed or mortgage is entitled to receive notice of the tax sale by either personal service or by mail only if he annually files an

application for notice with the clerk of the superior court of the county in which the land is located. The code section does not provide for notification of a tax sale to an owner of a security deed or mortgage who fails to apply for notification.

In Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (103 SC 2706) (1983), the United States Supreme Court had under consideration the constitutionality of an Indiana statute which provided that an owner of property to be sold at a tax sale would be notified of the sale by mail, Ind. Code. sec 6-1.1-24-4, but that a mortgagee of the property would be notified by posted notice in the county courthouse and published notice in the county legal organ.

sec. 6-1.1-24-3. Under Indiana law the owner or other person with an interest in the property was entitled to redeem the property for a two-year period following the tax sale. sec. 6-1.1-25-1. If the property was not redeemed, the county auditor was required to issue a tax deed to the purchaser at the tax sale at the end of the two-year period. The Court (U.S. Supreme) held that because a mortgagee has a substantial interest in property that may be significantly affected by a tax sale notice of the tax sale by publication and posting on the courthouse is not sufficient to meet the requirements of due process. That Court held that "[n]otice by mail or other means as certain to ensure actual notice is a

minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party . . .if its name and address are reasonably ascertainable. 462 U.S. at 800. Based on Mennonite, supra, the special master and trial court in this case found that OCGA 48-4-46(b) and (c) are not in accord with the requirements of due process because an owner of a security deed or mortgage who lives outside the county in which the land is located will only receive published notice of the foreclosure of the right to redeem. We agree.

. . .Notice of the tax sale and notice of foreclosure of the right to redeem are distinct events. under

OCGA 48-4-45 the purchaser at the tax sale must wait a minimum of 12 months to foreclose and "forever bar" the right to redeem, but the statute places no time limitation on how long the purchaser may wait to foreclose the right to redeem. Thus there is a floor, but not a ceiling. Once the right to redeem has been foreclosed under sec. 48-4-45, "the right to redeem is gone, and there is no power even in a court of equity to authorize a redemption of the property..." [Two Georgia Supreme Court cases cited.] The owner of a deed to secure debt or mortgage who does not reside in the county where the land is located has a substantial property interest which will be significantly affected by lack of

actual notification that his right to redeem is to be foreclosed. Notice by publication that this right may be affected does not satisfy the requirements of due process under Mennonite, supra." (Emphasis added.)

In these cases the only method of publication provided for by the State Court of Fulton County enactment [Civil Arbitration pursuant to Fulton Superior Court Local Rule 1000] or carried out by Office of Civil Arbitration pursuant to Fulton Superior Court Local Rule 1000 is limited to:

(i) Posting such award on a bulletin board outside the Court Administrator's Office on the seventh (7th) floor of the Fulton County Courthouse, and

(ii) Keeping a copy of such award in the case[s] file[s] in the Office of Civil Arbitration. (R-302-303).

The award of the arbitrators is not mailed to counsel of record or the parties in a case. The award is not served on the parties or counsel of record by the Marshall's or Sheriff's Department or anyone. There is no other provision for notice of the arbitrators' award which will adversely affect property interests of the parties irrespective of where the parties or counsel may reside. (R-302-303).

Neither appellants or their counsel received any notice of such awards (R-297-301), did not know that the arbitration had even taken place and

therefore were prevented from filing and making a demand for trial [de novo] within thirty (30) days thereof. SEE: Appellants' briefs page 3.

3.

This court in Sun v. Jones, 188 Ga. 552 (373 SE2d 656) (September 23, 1988) pursuant to the guidelines of the United States Supreme Court in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (70 SC 652) (1949) held that the minimum requirement of the State of Georgia action for notice and personal service, if unrefuted, after pendency is met by the service by mail, to wit, at pages 552 and 553:

"McMurray, Presiding Judge.

'An elementary and fundamental requirement of due process in any proceeding which is to be accorded

finality is notice reasonably calculated . . .to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (70 SC 652) (1949) . . .We concluded that once apprised of the pendency of a lawsuit a party's constitutional right to notice and the opportunity to be heard is met by the service by mail provided by Code Ann sec. 81-A-105(b) [now OCGA 9-11-5(b)]. (Georgia Supreme Court case cited.)' (Emphasis added.)

In these present actions and appeals, pursuant to Fulton Superior Court Local Rule 1000, the award of the arbitrators

is not mailed to counsel of record or the parties in a case. The award is not served on the parties or counsel of record by the Marshall's or Sheriff's Department or anyone. There is no other provision for notice of the arbitrators' award which will adversely affect property interests of the parties irrespective of where the parties or counsel may reside. (R-302-303).

Neither appellants or their counsel received any notice of such awards (R-297-301), did not know that the arbitration had even taken place and therefore were prevented from filing and making a demand for trial [de novo] within thirty (30) days thereof. SEE: Appellants' briefs page 3.

This court in Benton v. Modern Finance & Investment Company, 244 Ga. 533 (October 25, 1979) relying on Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (70 SC 652) (1949) and this court's own rulings in Thompson v. Lagerquist, 232 Ga. 75, 76 (1974) and Womble v. Commercial Credit Corp., 231 Ga. 569, 571 (1974) which both adopted Mullane, supra, held unconstitutional OCGA 81A-104(d)(6) as violative of the due process clause of the 14th Amendment to the United States Constitution and as providing for notice not reasonably calculated to reach interested persons or that the forum chosen is not substantially less likely to bring home notice than other of the feasible and customary

substitutes, such as mailing, and this court tenaciously, firmly and securely announced as though chiseled in judicial granite that: "Notice is the very bedrock of due process."

The Benton, supra, decision:

Jordan, Justice.

". . . appellee filed a complaint in the State Court of Fulton County against. . .appellant, on a promissory note in the amount of seventy-three dollars ($73) plus interest and attorney fees. When the appellant filed no answer within the lawful period, a default judgment was entered against her in the amount of eight-five and 94/100 dollars ($85.94) . . .appellant filed a motion to set aside the default judgment which was denied.

. . .appellant did not receive actual notice but . . .appellant was served in accordance with OCGA 81A-104(d)(6) which provides that "If the principal sum involved is less than $200 [service may be perfected] by leaving a copy [of the summons and complaint] at the [defendant's] most notorious place of abode."

. . .appellant urges that the rial court erred in holding that OCGA 81A-104(d)(6) does not violate the due process clause of the 14th Amendment to the United States Constitution. For the reasons noted below, we agree with the appellant and reverse the trial court's denial of her motion to set aside the default judgment.

'. . .[T]he constitutional validity of any chosen method [of service] may be

defended on the ground that it is in itself reasonably certain to inform those affected . . .or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.' Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (70 SC 652) (1949). '[N]otice is the very bedrock of due process.' Thompson v. Lagerquist, 232 Ga. 75, 76 (205 SE2d 267) (1974).

As the United States Supreme Court expressly noted, 'Exceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. ' Id. at 318.

Therefore OCGA 81A-104(d)(6) conforms to the constitutional dictates of due process only if its form of service is 'reasonably certain to inform those affected.'

'The mere leaving of copy of suit at the residence of the defendant is not reasonably calculated apprise him of he pendency of an action against him. He may be absent from such abode for an extended length of time. He may be in the process of moving from one residence to another. The copy may be destroyed by inclement weather, or be removed by other persons.' Womble v. Commercial Credit Corporation, 231 Ga. 569, 571 (203 SE2d 204) (1974). Accordingly, we hold that OCGA 81A-104(d)(6), which authorizes service by leaving a copy at the defendant's most

notorious place of abode on the sole condition that the principal sum involved be less than $200 violates the due process clause of the 14th Amendment of the United States Constitution.
Judgment reversed." (Emphasis added.)

Georgia Supreme Court Justice Hill attempted in a concurring opinion to assist the Georgia legislature in redrafting OCGA 81A-104(d)(6) so that it comported to the mandates of the 14th Amendment of the United States Constitution and the guideline of the United States Supreme Court in Mullane, supra, as follows:

"Hill, Justice concurring.
Although I concur in the judgment for the reasons stated in the opinion, I

believe the objections specified in Womble, supra, can be cured by tightly drawn legislation. For example, taping the service copy of the complaint in a marked, waterproof packet high on the door, making it a misdemeanor for a person other than a resident of those premises to remove such marked packet, and duplicating service by return mail could overcome or minimize most of the Womble objections." (Emphasis added.)

Here appellant, Susan, had an arbitration award by default entered against her in the amount of $61,976.49 plus interest after she had a few days before filed her conforming and legal motion for continuance, supported by the affidavit of her treating physician

of her surgeries in Chattanooga, Tennessee, and the counsel was told by the Office of Arbitration that the arbitration had been continued, and then her only notice or that of her counsel of the entry of the default arbitration award in the amount of $61,976.49 plus interest was the posting or "publishing" of it on a bulletin board on the seventh (7th) floor of the courthouse--a highly secured area with limited access by and to the public--and a copy of the award kept in a desk drawer of the Administrator of the Office of Arbitration on the same limited access seventh (7th) floor of the same courthouse. Neither appellant Susan or her mother, appellant Elizabeth,--who under the same circumstances had an

arbitration award of $5,000.00 dollars for attorney fees [attorney fees were not plead for legally or asked for factually in the underlying action filed by appellee in the Superior Court of Fulton County] entered against her--received any other notice, nor did her attorney, by service at their published of record addresses, either personally or by the usual and customary United States mail methods or any other known or "reasonably calculated" or accepted modes of notice or service "to reach interested parties." Thus the 30 day period expired in which appellants could have easily cured the notice and service deficiency by peremptorily filing their Rule 1000 "Demand For Trial De-Novo".

Thereafter, judgments on the default arbitration awards were entered without notice against both appellants, contrary to OCGA 15-6-21(c) and Cambron v. Canal Insurance Company, 246 Ga. 147 (269 SE2d 426) (1980). It was only after a credit problem arose with appellant Susan and both appellants having their bank accounts taken by garnishment that either of them or their counsel knew anything of what had transpired. (R-297-301) (R-302-303).

The 14th Amendment of the United States Constitution "unconstitutional" lack of notice and lack of service was expressly provided for in Superior Court of Fulton County. Local [Arbitration] Rule 1000, as follows:

Local Arbitration Rule 1000

Rule 14.

> The award is published to the parties, and the written award filed with the Court Administrator or his designee on the day of the hearing. (R-302-303).

How published by rule and custom and practice? As follows:

(i) Posting such award on a bulletin board outside the Court Administrator's Office on the seventh (7th) floor of the Fulton County Courthouse, and

(ii) Keeping a copy of such award in the case[s] file[s] in the Office of Civil Arbitration. (R-302-303).

All contrary to the due process mandates and guidelines setup by the United States Supreme Court in Mullane v. Central Hanover Bank & Trust Co.,

339 U.S. 306 (70 SC 652) (1949), Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (103 SC 2706) (1983), Tulsa Professional Collection Services, Inc. v. Pope, Executrix Of The Estate Of Pope, 485 U.S. 478 (1988) and the many, many decisions of this Court, herein discussed, imposing these United States Supreme Court guidelines to and against the "State actions" of the legislative or judicial enactments of the State of Georgia.

5.

This court in Womble v. Commercial Credit Corp., 231 Ga. 569 (January 8, 1974) relying on Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (70 SC 652) (1949) held unconstitutional OCGA 81-202 [Code of 1933] as violative of the due process

clause of the 14th Amendment to the United States Constitution and as providing for notice not reasonably calculated to reach interested persons or that the forum chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.

The Womble, supra, decision:

"Mobley, Chief Justice.

"The service on the appellant by leaving a copy at his most notorious abode in the county was not reasonably calculated to apprise him of the pendency of the action, and was a denial of due process of law as guaranteed by Fourteenth Amendment of the Constitution of the United States.

Motion to set aside judgment; constitutional question.

Gwinnett State Court.

[Appellant's] motion to set aside alleged that service was made by leaving a copy of the suit at his most notorious place of abode, and that he never received actual notice of the suit. The motion asserts that [OCGA] 81-202, as amended of the Code of 1933. . .which provided that leaving a copy at the defendant's residence was sufficient service, was not reasonably calculated to inform a defendant of the claims made against him, and that the rendering of a default judgment after such service deprived the appellant of his property without due process of law, in violation of the Fourteenth

Amendment to the Constitution of the United States.

The question for determination in the present case is whether the provision of [OCGA] 81-202 of the Code of 1933, authorizing service by leaving copy at the residence of the defendant, afforded due process as required by the Fourteenth Amendment of the United States Constitution. Such service has been held to be sufficient [case cited] but not as against a constitutional attack. In Jefferson Fire Ins. Co. v. Brackin, 140 Ga. 637 (2) (79 SE 467) this court held: 'One of the essential elements of due process of law, to which every one is entitled before he can be lawfully deprived of this property, is notice of the

procedure against him. This notice must not be dependent upon chance, and must at least be such as with reasonable probability will apprise him of the pendency of the proceeding. . .'

The United States Supreme Court in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (70 SC 652) (1949) laid down the following principle 'An elementary and fundamental requirement of due process in an proceeding which is to be accorded finality is notice reasonably calculated under all the circumstance, to apprise interested parties of the pendency of the action and afforded them an opportunity to present their objections..' We therefore conclude that the provision

of [OCGA] 81-202 of the Code of 1933, authorizing service by leaving a copy at the residence of the defendant, was in violation of the due process clause of the Fourteenth Amendment of the United States Constitution. Judgment reversed. All the Justices concur." (Emphasis added.)

6.

This court again in Thompson v. Lagerquist, 232 Ga. 75 (April 4, 1974) which it cites with approval and controlling in Benton v. Modern Finance & Investment Company, 244 Ga. 533 (1979), heretofore discussed, in applying the notice guidelines and standards of due process of the 14th Amendment of the United States Constitution in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306

(70 SC 652) (1949). Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (103 SC 2706) (1983), Tulsa Professional Collection Services, Inc. v. Pope, Executrix of the Estate of Pope, 485 U.S. 478 (1988), reverses a default judgment against appellant taken pursuant OCGA 81A-104(d)(7) as being violative of the notice due process requirements since "notice is the very bedrock of due process."

The Thompson, supra, decision:

"Jordan, Justice.

"This appeal is from a judgment dismissing the appellant's complaint in Fulton County Superior Court to set aside and vacate a judgment rendered against him in the Civil Court of Fulton County and to enjoin the prosecution of said judgment.

. . .a default judgment was rendered in the Civil Court. . .against the appellant. . .Subsequent thereto, the appellee proceeded to prosecute said judgment through a garnishment proceeding against the appellant. [The same as here.] Thereafter. . .appellant filed this complaint in Fulton Superior Court to set aside and vacate the default judgment and to enjoin the appellee from the prosecution of said judgment. The sworn pleadings and uncontradicted evidence before the trial court show. . .that neither the appellant nor his wife was ever advised concerning the suit and summons until after judgment, nor have they ever received or seen the

suit and summons issued in the Civil Court of Fulton County. . . [OCGA] 81A-104(d)(7) requires delivery of the summons and complaint "in all other cases to the defendant personally, or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.' This court has strictly construed the provisions of this Code section, and rightfully so, since notice is the very bedrock of due process.

Judgment reversed. All the Justices concur." (Emphasis added.)

7.

This court as far back as 1913 in Jefferson Fire Insurance Company v. Brackin, 140 Ga. 637 (October 2, 1913)

held the provision of the Georgia Official Code, sec. 2564 unconstitutional, under the due process requirements of the 14th Amendment to the United States Constitution, which permitted service and notice being perfected by leaving a copy of the summons and petition or writ at the place of doing business at the time the cause of action accrued or the contract was made out of which the action arose. This holding and opinion although scores of years before Mullane, supra, Mennonite, supra, and Tulsa, supra, was in complete conformity with these later day holdings of the United States Supreme Court as to the minimum requirements for due process under the 14th Amendment of the United States Constitution.

The Jefferson case, supra, in applicable part at page 638:

"Fish, C.J.

"The Civil Code, sec. 2564, provides, that, in an action of the character referred to. . .service may be perfected upon the insurance company by leaving a copy of the petition or writ where the agency or place of doing business was located in the county at the time the cause of action accrued, or the contract was made out of which the same arose. This provision of the code section is unconstitutional, because violative of the due-process cause of both the State and Federal constitutions. One of the essential elements of 'due process of law,' to which every one is entitled before he can be lawfully

deprived of his property, is notice of the procedure against him. This notion must not be dependent upon chance, and must at least be such as with reasonable probability will apprise him of the pendency of the proceeding.' [Georgia authorities cited.] (Emphasis added.)

As in these cases, is the posting, only, of the arbitration awards on a bulletin board on the seventh (7th) floor of a courthouse, which is secured with limited access to and by the general public, and the keeping of a copy of the arbitration awards in the desk drawer of the private office of the Administrator of Arbitration to which the public, the appellants and their attorneys have no access a practice of and notion of due process

that leaves notice to chance and affords no reasonable probability that the defendants will ever know of the action taken against them that will deprive each of their property?

Under this state of the art of due process a citizen would be better off casting his lot with the town crier and his brass bell at 8:00 a.m., once a week, on the courthouse steps, or per Rudyard Kipling: ". . .take one heap of all your winnings and risk them on one turn of 'pitch-and-toss'."

CONCLUSION

Respectfully, this Court is requested to grant appellants' Motion For Reconsideration and to vacate its judgment order herein entered October 17, 1990 and to further enter its order reversing the judgments of the Superior

Court of Fulton County, Georgia and to enter judgment in favor of appellants and against appellee, with or without opinion as the Court deems appropriate.

Susan Fasse and Elizabeth Jane Fasse, appellants.

By: _____
One of their attorneys

SUBMITTED BY:

ATTORNEYS FOR APPELLANTS:

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Thomas V. Cassidy, Esq.
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Admitted pro hac vice by order 1-14-88
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In the Supreme Court of Georgia

Decided: Oct 17, 1990

S90A0816. FASSE V HODGGSON
S90A0817. FASSE V HODGSON

PER CURIAM.

Judgment affirmed without opinion pursuant to Rule 59.

All the Justice concur.

SUPREME COURT

STATE OF GEORGIA

Oct. 24, 1989

TO ALL COUNSEL;

RE: Application No. S89D0617,
Susan Fasse v. Patricia B. Hodgson

The Court today granted this application for discretionary appeal. All the Justices concur, except Clarke, P.J. and Smith, J., not participating.

Your notice of appeal must be filed in the trial court within 10 days from this date. When the record is received from the trial court and docketed in this court you will be sent a docketing notice showing the date of docketing and the Case Number assigned. The appellant's enumeration of errors and briefs will be due in this Court within 20 days from the date of docketing; the

appellee's briefs will be due within 40 days from the date of docketing or within 20 days after the appellant's briefs are filed, whichever is later.

The Court is particularly concerned with, and requests that you address in your briefs, the following:

1) whether the motion to set aside should have been granted because the defendant did not have notice of the final judgment?

2) whether the notice of award provisions of Fulton County Local Rule 1000 are sufficient?

Joline B. Williams, Clerk

By:_____

SUPREME COURT

STATE OF GEORGIA

Nov. 20, 1989

TO ALL COUNSEL;

RE: Application No. S90D0150, Elizabeth Jane Fasse v. Patricia B. Hodgson

The Court today granted this application for discretionary appeal. All the Justices concur.

Your notice of appeal must be filed in the trial court within 10 days from this date. When the record is received from the trial court and docketed in this court you will be sent a docketing notice showing the date of docketing and the Case Number assigned. The appellant's enumeration of errors and briefs will be due in this Court within 20 days from the date of docketing; the

appellee's briefs will be due within 40 days from the date of docketing or within 20 days after the appellant's briefs are filed, whichever is later.

The Court is particularly concerned with, and requests that you address in your briefs, the following:

1) The validity of the notice of award provisions of Fulton County Local Rule 1000 and

2) Whether the motion to set aside should have been granted because the defendant did not have notice of the final judgment.

Joline B. Williams, Clerk

By:_____

IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA

SUSAN FASSE	)
	)
Petitioner/Appellant,	)
	)
	)
vs.	)
	)
PATRICIA B. HODGSON,	)
	)CASE
Respondent/Appellee.	)No.
	)S89D0617

PETITION

Comes now Susan Fasse, Petitioner herein by and through her counsel and respectfully files her Petition pursuant to O.C.G.A. Section 5-6-35, respectfully showing as follows:

1.

The errors to be enumerated on Appeal are as follows:

(i) The trial court erred in not ruling on Petitioner's Motion for

Continuance filed pursuant to O.C.G.A. Section 9-10-154. on January 31, 1989.

(ii) The trial court erred in not ruling that Fulton Superior Court Local Rule 1000 violates the due process clause of the United States and Georgia Constitutions in that the methods of publishing the award of the arbitrators (by posting a copy of same on a bulletin board outside the Court Administrator's Office and keeping a copy of same in the Office of Civil Arbitration Case file) are insufficient to give such notice of the award as is required by the said due process clause.

(iii) The judgment entered on March 7, 1989 was absent from the Court's file thus preventing Petitioner

from having knowledge of same in order to protect her rights.

2.

The Supreme Court of Georgia has jurisdiction of this case on Appeal pursuant to Article 6, Section 6, Paragraph II of the Georgia Constitution for the reason that the Supreme Court of Georgia has exclusive appellate jurisdiction in a case where the constitutionality of a law is in question. At issue here is whether Fulton Superior Court Local Rule 1000 is violative of the due process clause of the Georgia and United States Constitutions.

3.

The Order being appealed is the Order of the Honorable Clarence Cooper, Judge, Fulton Superior Court, entered

August 28, 1989, denying Petitioner's Motion to Set Aside Judgment.

4.

Attached hereto and made a part hereof as Exhibits are the following:

(i) Exhibit "A" - Copy of Order appealed.

(ii) Exhibit "B" - Copy of Motion To Set Aside Judgment (with exhibits).

(iii) Exhibit "C" - Copy of Brief in Support of Motion to Set Aside Judgement.

(iv) Exhibit "D" - Copy of Brief in Opposition to Defendant's Motion To Set Aside Judgment.

(v) Exhibit "E" - Fulton Superior Court Local Rule 1000 (14).

Wherefore Petitioner prays that her Petition herein be granted and that the Order appealed be reversed.

DAVID N. LEVINE P.C.

David N. Levine, Esq.
Attorney for Petitioner/Appellant
GA Bar No. 448400

5775 C Peachtree Dunwoody Rd.
Suite 200
Atlanta, GA 30342
(404) 256-9444

IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA

ELIZABETH JANE FASSE	)
	)
Petitioner/Appellant,	)
	)
	)
vs.	)
	)
PATRICIA B. HODGSON,	)
	)CASE
Respondent/Appellee.	)No.____

PETITION

Comes now Elizabeth Jane Fasse, Petitioner herein by and through her counsel and respectfully files her Petition pursuant to O.C.G.A. Section 5-6-35, respectfully showing as follows:

1.

The errors to be enumerated on Appeal are as follows:

(i) The trial court erred in not ruling that Fulton Superior Court Local Rule 1000 violates the due process clause of the United States and Georgia Constitutions in that the methods of publishing the award of the arbitrators (by posting a copy of same on a bulletin board outside the Court Administrator's Office and keeping a copy of same in the Office of Civil Arbitration Case file) are insufficient to give such notice of the award as is required by the said due process clause.

2.

The Supreme Court has jurisdiction of this case on Appeal pursuant to Article

6, Section 6, Paragraph II of the Georgia Constitution.

3.

The Order being appeaLed is the Order of the Honorable Clarence Cooper, Judge, Fulton Superior Court, entered September 28, 1989, denying Petitioner's Motion to Set Aside Judgment.

4.

This case is a companion case to Susan Fasse vs. Patricia B. Hodgson, Supreme Court of Georgia Case No. S89D0617, in which Application for Discretionary Appeal was filed on September 27, 1989.

5.

Petitioner attaches hereto as Exhibit "E" and incorporates herein by reference the said Application for

Discretionary Appeal filed in said Case No. S89D0617.

6.

Attached hereto and made a part hereof as Exhibits are the following:

(i) Exhibit "A" - Copy of Order appealed.

(ii) Exhibit "B" - Copy of Motion to Set Aside Judgement and Brief in Support Thereof.

(iii) Exhibit "C" - Fulton Superior Court Local Rule 1000 (14).

(iv) Exhibit "D" - Copy of Order consolidating Susan Fasse vs. Patricia Hodgson, Fulton Superior Court Case No. D-14463 with Elizabeth Jane Fasse v. Patricia Hodgson, Fulton Superior Court Case no. D-26523.

Wherefore Petitioner prays that her Petition herein be granted and that the Order appealed be reversed.

DAVID N. LEVINE, P.C.

_____

David N. Levine
Attorney for Petitioner/Appellant
GA Bar No. 448400

5775 C Peachtree Dunwoody Rd.
Suite 200
Atlanta, GA 30342
(404) 256-9444

EXHIBIT "A"
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ELIZABETH JANE FASSE	)
	)
Plaintiff,	)
	)
	)CIVIL
vs.	)ACTION
	)FILE
PATRICIA B. HODGSON,	)NO
	)D-26523
Defendant	)

ORDER

Plaintiff's Motion to Set Aside Judgment came before the Court for consideration pursuant to O.C.G.A. Section 9-11-60.

After thorough review of all matters of record, the Court hereby denies said motion.

SO ORDERED this 26th day of Sept., 1989.

_____
JUDGE CLARENCE COOPER, Fulton Superior Court, A.J.C.

EXHIBIT "B"
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ELIZABETH JANE FASSE	)
	)
Plaintiff	)CIVIL
	)ACTION
	)FILE NO.
vs.	)D-26523
	)
PATRICIA B. HODGSON,	)
	)
Defendant.	)

MOTION TO SET ASIDE JUDGEMENT
AND BRIEF IN SUPPORT THEREOF

Comes now Elizabeth Jane Fasse, Plaintiff herein, by and through her counsel and respectfully moves this Court pursuant to O.C.G.A. Section 9-11-60 to set aside the judgment entered against her herein on or about the 6th of June, 1988.

In support of her Motion to Set Aside Judgment, Plaintiff shows that such judgment followed an award by

arbitrators pursuant to Local Rule 1000 of this Court. Plaintiff contends that said Local Rule 1000 violates the due process clause of the Constitutions of the United States of America and the State of Georgia and that such judgment should therefore be set aside.

Plaintiff adopts and incorporates herein by reference the Motion to Set Aside Judgment and Brief in Support of Motion to Set Aside Judgement filed by Defendant Susan Fasse in Case No. D-14463, which case has been consolidated with the instant case pursuant to previous order of this Court.

Wherefore, Plaintiff prays that the Judgment previously entered herein against her be set aside.

_____

David N. Levine
Ga Bar No. 448400
Attorney for Plaintiff

EXHIBIT "C"

13.

Arbitration hearings are intended to be brief evidentiary outlines of the case and not formal trials. Each side will be limited to a five (5) minute opening statement, unless there is a conflict of interest between the parties of such side, in which event each party with a conflict of interest may make a separate opening of five (5) minutes. At the discretion of the panel, testimony may be admitted into evidence by way of summarization by the attorney, if the witness is made available for examination. Affidavits, depositions, or portions of depositions may also be admitted into evidence as appropriate. Witnesses may be

subpoenaed as they would be to a trial. Closing argument shall be fifteen (15) minutes per side, unless there is a conflict of interest between the parties of such side, in which event such party with a conflict of interest may make a separate argument of ten (10) minutes. In the event that a party fails to appear, argument will be heard and evidence will be received from those parties appearing. Parties are encouraged to be present.

14.

At the close of the arbitration hearing, the arbitrators shall confer and return a written award for one side or the other which shows the damages, if any awarded, and which shows any dissent. A simple majority of the arbitrators is required to return an

award. The award is published to the parties, and the written award filed with the Court Administrator or his designee on the day of the hearing. No written findings of fact and conclusions of law are required.

15.

Arbitration hearings are not officially reported; counsel, at his or her own expense, may engage a private court reporter to record the proceedings.

16.

Any party may file a demand for trial within thirty (30) days of the filing of the arbitration award with the Court Administrator or his designee who shall make a notation and entry of the date of filing the award and of the trial demand; the demand for trial shall

contain the style of the case, the case number and a demand for jury or non-jury trial. Filing such demand for trial will entitle all parties to a de novo trial of all issues of fact or of law which were raised or could be raised in the arbitration hearing; such case will be tried before the judge to whom the case has been assigned in the ordinary procedure and course of time as if no arbitration hearing had been held provided, however, that testimony at the arbitration hearing may be used for any lawful purpose. Arbitration proceedings shall not delay or impede the normal trial of such case.

EXHIBIT "D"
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SUSAN FASSE Plaintiff	))Civil)Action)D-14463
vs.	)
PATRICIA B. HODGSON, Defendant	)

Consolidated with captioned Cases.
Formerly MO-1380, now as counter-claim
D-14463

ELIZABETH JANE FASSE Plaintiff	)Civil)Action
vs.	)D-26523
PATRICIA B. HODGSON, Defendant	)

Consolidated with captioned Cases.

PATRICIA B. HODGSON, Plaintiff, Counter-Defendant	)))Civil
vs.	)Action
SUSAN FASSE Defendant, Counter-Plaintiff	)D-14463)

Consolidated with captioned Cases.
MO-1360, now as
counter-claim in D-14463.

ORDER OF CONSOLIDATION

Coming on upon MOTION FOR CONSOLIDATION of Defendant and counter-plaintiff, SUSAN FASSE and Plaintiff, ELIZABETH JANE FASSE, jointly and severally for this court's order of consolidation nunc pro tunc to October 02, 1986, of the above captioned cases for trial and further proceedings before this court.

IT IS SO ORDERED.

ENTERED_____

Judge of the Superior Court

DATED: 20 Nov. 1987

Nunc pro tunc to October 02, 1986.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PATRICIA B. HODGSON,	)
	)
Plaintiff,	)
	)
	)CIVIL
vs.	)ACTION
	)FILE
SUSAN FASSE,	)NO.
	)D-14463
Defendant.	)

ORDER

Defendant's Motion to Set Aside came before the Court for consideration pursuant to O.C.G.A. Section 9-11-60.

Having heard argument of counsel and after thorough review of the respective briefs, the motion is hereby denied.

SO ORDERED, this 26th day of August, 1989.

_____
Judge Clarence Cooper
Fulton Superior Court, A.J.C.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PATRICIA B. HODGSON,	)
	)
Plaintiff,	)
	)
	)CIVIL .
vs.	)ACTION
	)FILE
SUSAN FASSE,	)NO.
	)D-14463
Defendant.	)

MOTION TO SET ASIDE JUDGMENT

Comes now SUSAN FASSE, Defendant herein, by and through her attorney and pursuant to O.C.G.A. Section 9-11-60 files her Motion to Set Aside the Judgment entered against her herein on March 7, 1989, respectfully showing the Court as follows:

1.

The within Motion to Set Aside is based upon nonamendable defects which appear upon the facts of the record and

the fraud, accident or mistake of the adverse party unmixed with the negligence or fault of the movant, as is set forth below.

2.

The within Motion to Set Aside is bought within three (3) years from the entry of said judgment.

3.

That on or about August 4, 1988 an Order for Arbitration was entered herein and a copy of such order sent to Defendant's attorney of record.

4.

That on or about August 29, 1988 a notice of the scheduling of such case for arbitration on October 21, 1988 was sent by the Office of Civil Arbitration to Thomas V. Cassidy, attorney of record for Defendant.

5.

That on or about October 17, 1988 Defendant, by her said counsel of record, filed her Motion for Continuance from such arbitration, wherein such counsel stated that Defendant was providentially prevented from attending such hearing and that counsel could not safely go to trial without Defendant's presence, all as required by O.C.G.A. Section 9-10-154, a copy of such Motion for Continuance being attached hereto as Exhibit "A" and made a part hereof.

6.

That on October 20, 1988 the Honorable Clarence Cooper, Judge, entered an Order granting such Motion for Continuance and re-setting the case for arbitration on February 3, 1989, a

copy of such Order being attached hereto as Exhibit "B" and made a part hereof.

7.

That a copy of such Order was sent to Defendant's counsel of record by the Office of Civil Arbitration of this Court on or about October 26, 1989, a copy of the envelope containing such Order being attached hereto as Exhibit "C" and made a part hereof.

8.

That on January 31, 1989 Defendant by her said counsel of record, filed her Motion for Continuance from such arbitration scheduled for February 3, 1989, wherein such counsel stated that Defendant was providentially prevented from attending such hearing and that counsel could not safely go to trial

without her presence, all as required by O.C.G.A. Section 9-10-154. An appropriate affidavit dated January 30, 1989 from Defendant's doctor was also attached to such Motion for Continuance wherein such doctor stated that defendant was examined and evaluated on January 23, 1989 and is "physically and medically unable to participate in any court proceedings. . .until further notice from this office or myself as her treating physician." A copy of said Motion and Affidavit is attached hereto as Exhibit "D" and made a part hereof.

9.

That pursuant to O.C.G.A. Section 9-10-154 counsel also stated that Defendant's continuances had not been exhausted.

10.

Plaintiff did not oppose such Motion for Continuance.

11.

That despite the requirement of O.C.G.A. Section 9-10-154 that a continuance shall be granted and despite the lack of an objection by Plaintiff to the Motion, no Order was entered herein granting or denying such Motion for Continuance.

12.

That on or about February 1, 1989, Defendant's counsel called the Office of Civil Arbitration and was advised that the arbitration scheduled for February 3, 1989 had been continued and that same would be re-set.

13.

That despite the existence of said unobjected to Motion for Continuance and without a ruling thereon, the arbitration was held on February 3, 1989.

14.

Defendant was providentially prevented from attending such arbitration and was unaware that such hearing was in fact being held.

15.

Unbeknownst to Defendant, the arbitrators awarded Plaintiff the amount of $51,181.25 and $10,795.24 attorney's fees.

16.

That neither Defendant nor her counsel of record were ever sent notice of such award as is set forth in the

Affidavits attached hereto as Exhibits "E", "F" and "G".

17.

That Local Rule 1000(14) of this Court requires that such award be published to the parties.

18.

In accordance with the Affidavit of Kimberly Warden, Arbitration Administrator, attached hereto as Exhibit "H" and made a part hereof, the method of publication of such award to the parties consists solely of the following:

(i) Posting same on a bulletin board outside the Court Administrator's Office on the seventh (7th) floor of the Fulton County Court House.

(ii) Keeping a copy of same in the case file in the Office of Civil Arbitration.

19.

That such Local Rule 1000(14) and the manner in which such award was published as above set forth fail to meet the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States of America and Article 1 of the Constitution of the State of Georgia.

20.

That such method of publication of the award to the parties as set forth in said Local Rule 1000(14) does not provide notice reasonably calculated to apprise Defendant of such award and to afford her the opportunity to timely

present her objections thereto by demanding a trial, as required by the said Constitutions of the United States of America and the State of Georgia.

21.

That no notice of such award was sent by mail or otherwise to the parties or to counsel of record.

22.

That as a result thereof Defendant was not given proper notice of such award and as unaware of the existence of same.

23.

That on or about March 7, 1989, without Motion or notice to Defendant or her counsel of record, a proposed judgment was presented to the Honorable Clarence Cooper, Judge by counsel for Plaintiff, which judgment in the total

amount of $61,976.49 against Defendant was signed by Judge Cooper on that day, a copy of same being attached hereto as Exhibit "I" and made a part hereof.

24.

That a copy of such Judgment was not sent to defendant or her counsel as required by O.C.G.A. Section 9-11-5, thus further depriving defendant of an opportunity to protect her interests.

25.

That all of the foregoing constitute nonamendable defects appearing on the face of the record herein and fraud, accident or mistake or the acts of the adverse party unmixed with the negligence or fault of Defendant.

26.

That despite such arbitration award in derogation of the said due process

clause as above set forth, and the procuring of said judgment by Plaintiff without notice to Defendant or her counsel of record, the within case appeared scheduled for trial on April 11, 1989 as published in the Fulton Daily Report.

27.

Defendant, not knowing of the existence of said judgement and still being providentially prevented from appearing for trial, on April 4, 1989 filed her Motion for Continuance from said April 11, 1989, trial calendar, a copy of such Motion being attached hereto as Exhibit "J" and made a part hereof.

28.

That no order has ever been entered on such Motion for Continuance.

29.

That the original judgment herein signed by Judge Clarence Cooper has not been in the Court's file at all relevant times herein thus additionally preventing Defendant from having knowledge of same.

30.

That as a result of the set forth facts Defendant is entitled to have said judgment set aside.

31.

That as a result of the entry of said judgment without notice and in violation of said due process cause, Defendant has had her credit rating severely and irreparably damaged and has had credit applications denied.

32.

That a fi. fa. was issued herein on March 13, 1989.

33.

Plaintiff has filed at least seven (7) garnishment actions seeking to enforce such wrongfully obtained judgment all to the irreparable harm, damage and injury of Defendant.

34.

That as a result of the foregoing Defendant has suffered and continues to suffer irreparable harm, damage and injury pending a ruling on the within Motion to Set Aside Judgment, for which she has no adequate remedy at law.

35.

That Plaintiff should be restrained and enjoined from prosecuting such pending garnishment actions and from taking any other action of any kind,

nature or description seeking to enforce such wrongfully obtained judgment pending a hearing hereon and further order of this Court.

WHEREFORE Defendant prays as follows:

a) That a Rule Nisi issue requiring Plaintiff to show cause why Defendant should not have the relief sought herein.

b) That Plaintiff be restrained and enjoined from taking any action to enforce said Judgment pending a ruling on the within Motion.

c) That all pending garnishment actions already filed by Plaintiff be stayed pending a ruling on the within Motion.

d) That the Judgment against Defendant herein be set aside.

e) That Defendant have such other and further relief as the Court shall deem just, equitable and proper.

DAVID N. LEVINE, P.C.

_____
David N. Levine, Attorney for
Defendant Susan Fasse
Ga. Bar No. 448400

EXHIBIT "A"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
ARBITRATION
&
CIVIL LITIGATIONS

SUSAN FASSE Plaintiff	))CiviL)Action)D-14463
vs.	)
PATRICIA B. HODGSON, Defendant	)

Consolidated with captioned Cases.
Formerly MO-1360, now as counter-claim D-14463

ELIZABETH JANE FASSE Plaintiff	)Civil)Action
vs.	)D-26523
PATRICIA B. HODGSON, Defendant	)

Consolidated with captioned Cases.

PATRICIA B. HODGSON, Plaintiff, Counter-Defendant	))
vs.	)Civil)Action
SUSAN FASSE Defendant, Counter-Plaintiff	)D-14463)

MO-1360, now as counter-claim in D-14463.

MOTION FOR CONTINUANCE
ARBITRATION AND CIVIL LITIGATIONS

Defendant and counter-plaintiff SUSAN FASSE by ROBERT A. MEIER IV and THOMAS V. CASSIDY her attorneys respectfully petitions the court and the arbitration panel for its order of continuance of one or all of the above captioned consolidated matters at least until next term court and arbitration term upon the grounds of and as grounds for

1. That SUSAN FASSE a party is providentially prevented from attending the trial and/or arbitration hearing of the case[s] and the undersigned counsel for the party states he cannot safely go to trial without the presence of the absent party by reason of her illness and medical doctor's orders and directions, and further it is stated

and represented that the continuances of the party SUSAN FASSE have not been exhausted.

2. In support of same there is here attached the medical certificate of Dr. John A. Shull, M.D., 929 Spring Creek Road, Suite #203, Chattanooga, Tennessee 37412 dated September 21, 1988 [EXHIBIT "A"] supported by affidavit. [EXHIBIT "B"].

SUSAN FASSE, defendant
and counter-plaintiff

By:_____
one of her attorneys so certifies.

ATTORNEYS FOR SUSAN FASSE
ROBERT A. MEIER, IV and:
THOMAS V. CASSIDY
2648 Sharondale Circle, N.E.
Atlanta, GA 30305
(404) 237-0494

EXHIBIT "A"

JOHN A. SHULL, M.D.
OBSTETRICS AND GYNECOLOGY
929 Spring Creek Road
Suite 203
Chattanooga, TN 37412
(615) 855-0357

Sept. 21, 1988

TO WHOM IT MAY CONCERN

Ms. Susan Jane Fasse of Atlanta, Georgia is under my treatment and care for diagnosed pathology and will be for an unforeseeable period into the future.

Due to this she is unable to physically or medically participate in any court proceedings or depositions until further notice from this office and myself.

Yours very truly,

John A. Shull, M.D.

STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT

SUSAN JANE FASSE, affiant being of lawful age deposes and states upon her oath that the matters contained in the one (1) page medical report of Dr. John A. Shull, M.D., 929 Spring Creek Road, Suite 203, Chattanooga, Tennessee 372412 (615) 855-0357 dated September 21, 1988 and written on the letter head stationary of Dr. Shull are of her own personal knowledge, and what was related to her by Dr. Shull, M.D. as his patient true in substance and in fact.

_____
SUSAN JANE FASSE, affiant
Sworn to and subscribed
before me this _____
day of _____, 1989.

_____
Notary Public

EXHIBIT "B"
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PAT HODGSON	)
	)CIVIL
Plaintiff,	)ACTION
	)FILE
vs.	)D-14463
	)
SUSAN FASSE	)
	)
Defendant.	)

ORDER

This case having been assigned to the Civil Arbitration Program, and having been scheduled for the arbitration hearing, and, pursuant to Local Rule 1000 of this Court, a legal reason having been given or good cause having been shown, this arbitration hearing is reset from October 21, 1988 and is hereby continued until February 3, 1989 at 11:30 a.m.

SO ORDERED, this 20th day of October, 1988.

Clarence Cooper, Judge
Fulton County Superior Court

EXHIBIT "D"
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
ARBITRATION
&
CIVIL LITIGATIONS

SUSAN FASSE Plaintiff	))CiviL)Action)D-14463
vs.	)
PATRICIA B. HODGSON, Defendant	)

Consolidated with captioned Cases.
Formerly MO-1360, now as counter-claim
D-14463

ELIZABETH JANE FASSE Plaintiff vs. PATRICIA B. HODGSON, Defendant	)Civil)Action)D-26523)

Consolidated with captioned Cases.

PATRICIA B. HODGSON, Plaintiff, Counter-Defendant vs. SUSAN FASSE Defendant, Counter-Plaintiff	)))Civil)Action)D-14463)

MO-1360, now as counter-claim in D-14463.

MOTION FOR CONTINUANCE
ARBITRATION AND CIVIL LITIGATIONS

Defendant and counter-plaintiff SUSAN FASSE by ROBERT A. MEIER IV and THOMAS V. CASSIDY her attorneys respectfully petitions the court and the arbitration panel for its order of continuance of all of the above captioned consolidated matters a least until next term court and arbitration term upon the grounds of and as grounds for:

1. That SUSAN FASSE a party is providentially prevented from attending the trial and/or arbitration hearing of the consolidated by court order cases and the undersigned counsel for the party states he cannot safely go to trial without the presence of the absent party by reason of her illness and medical doctor's orders and

directions, and further it is stated and represented that the continuances of the party SUSAN FASSE have not been exhausted.

2. In support of same there is here attached the affidavit of Dr. John A. Shull, M.D., 929 Spring Creek Road, Suite #203, Chattanooga, Tennessee 37412 dated January 30, 1989, who is defendant and counter-plaintiff's Susan J. Fasse, treating physician (Exhibit "A") and further supported by the affidavit of Susan J. Fasse, defendant and counter-plaintiff (Exhibit "B").

3. That this motion is made in good faith and not for purpose of unwarranted delay.

4. That these matters are set before the ARBITRATION PANEL as the ninth (9th) cases scheduled to commence at

11:30 a.m. on Friday, February 03, 1989.

SUSAN FASSE, defendant
and counter-plaintiff.

BY:_____
one of her attorneys so certifies.

ATTORNEYS FOR SUSAN FASSE

ROBERT A. MEIER, IV and
THOMAS V. CASSIDY
2648 Sharondale Circle, N.E.
Atlanta, GA 30305
(404) 237-0494

JOHN A. SHULL, M.D.
OBSTETRICS AND GYNECOLOGY
929 Spring Creek Road
Suite 203
Chattanooga,-TN 37412
(615) 855-0357

January 30, 1989

Affidavit

To Whom It May Concern:

This is in supplement to my September 21, 1988, "To Whom It May Concern" letter concerning my patient, Ms. Susan J. Fasse of Atlanta, Georgia.

Ms. Fasse of Atlanta, Georgia, continues under my treatment and care for diagnosed pathology and will be for an unforeseeable period into the future. Her diagnosed pathology although acute is continuing in nature.

Ms. Fasse did, indeed, enter as an inpatient, Humana East Ridge Hospital, Chattanooga, Tennessee, on December 2,

1988, where I performed specialized/general surgery upon her in connection with her diagnosed pathologies. Her conditions of ill-being continue. Upon my physician order, she is presently on medication and will be for an unforeseeable period.

I saw Ms. Fasse in my office for examination and evaluation on January 23, 1989, and pursuant to this it is my recommendation that Ms. Fasse is in further need of inpatient surgery. Upon my direction she will see in consultation with myself Dr. C.Y. Liu, M.D., 4308 Brainerd Rd., Chattanooga, Tennessee (37411) a 10:30 a.m., Feb. 8, 1989. My patient's, Ms. Fasse, surgery will be carried out within the next thirty to sixty days.

With a view to the foregoing, Mrs. Susan Fasse is presently permanently partially disabled and physically and medically unable to participate in any court proceedings or depositions until further notice from this office or myself as her treating physician.

Yours very truly,

John A. Shull, M.D.

Subscribed and sworn to before me this 30th day of January, 1989.

Exhibit "A"

STATE OF GEORGIA)

COUNTY OF FULTON)

AFFIDAVIT

SUSAN JANE FASSE, affiant, being of lawful age deposes and states upon her oath that the matters contained in the attached and verified affidavit medical report of Dr. John A. Shull, M.D. 929 Spring Creek Road, Suite 203, Chattanooga, Tennessee 37412, (615) 855-0357 dated January 30, 1989 and written on the letter head stationary of Dr. Shull are of her own personal knowledge and what was related to her by Dr. Shull, M.D. as his patient, true in substance and in fact, further, affiant states that the matters contained in her attached Motion For Continuance are true in substance and in fact; FURTHER AFFIANT STATES: that

the grounds for this continuance are providential in nature due to the physical medical condition of pathology of the affiant and not within the control of the affiant herein.

_____

SUSAN JANE FASSE, affiant.

Subscribed and sworn to before me this 30 day of Jan., 1989
SEAL

EXHIBIT "B"

EXHIBIT "E"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PATRICIA B. HODGSON,	)
	)
Plaintiff,	)
	)
	) CIVIL
vs.	) ACTION
	) FILE
SUSAN FASSE,	) NO.
	) D-14463
Defendant.	)

AFFIDAVIT

Personally appeared before me the undersigned authority duly authorized to administer oaths SUSAN FASSE who after being sworn, on oath deposes and states as follows:

That she is the Defendant in the within action.

That inpatient surgery was performed on her by John A. Shull, M.D. on December 2, 1988 in Chattanooga, Tennessee.

That she was examined by Dr. Shull in his office on January 23, 1989.

That the facts contained in her Motion for Continuance and her Affidavit filed herein on January 31, 1989 were true and correct.

That she was physically and medically unable to attend or participate in any legal proceedings to be held on February 3, 1989 herein.

That at no time prior to June 10, 1989 did she receive any notice of the award of the arbitrators or the judgment granted herein.

That she first learned of such judgment on or about June 10, 1989 when she was denied credit by Georgia Federal Bank.

That the allegations contained in her Motion to Set Aside Judgement are true and correct.

That this Affidavit is freely given and may be used for any lawful purpose.

This 1st day of August, 1989.

_____
Susan Fasse

Sworn to and subscribed
before me this 1st day of August, 1989.

EXHIBIT "F"

GEORGIA FULTON COUNTY

Personally appeared before the undersigned authority duly authorized to administer oaths

ROBERT A. MEIER, IV. ESQ.

who after being sworn on oath deposes and states as follows:

That he is a counsel of record for Defendant Susan Fasse in Case No. D-14463, Fulton Superior Court.

That he has been a counsel of record in such case for Defendant at all times from October 1, 1988 through the present date.

That at no time did he receive notice from the Court, the Office of Civil Arbitration or from opposing counsel of any arbitration award herein, the

presenting of a proposed judgment signed by Judge Cooper herein.

This Affidavit is made from personal knowledge and may be used for any lawful purpose.

This 18 day of July, 1989.

Sworn to and subscribed before me this 21 day of July, 1989

_____

ROBERT A MEIER, IV

EXHIBIT "G"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PATRICIA B. HODGSON,	)
	)
Plaintiff,	)
	)
	)CIVIL
vs.	)ACTION
	)FILE
SUSAN FASSE,	)NO.
	)D-14463
Defendant.	)

GEORGIA FULTON COUNTY

Personally appeared before me the undersigned authority duly authorized to administer oaths THOMAS V. CASSIDY who after being sworn, on oath deposes and states as follows:

That he is a counsel of record for Defendant Susan Fasse in the within case.

That he has been a counsel of record for said Defendant since January 14,

1988.

That on or about February 1, 1989 he called the Office of Civil Arbitration and was advised that the Motion for Continuance filed January 31, 1989 had been received and that the arbitration scheduled for February 3, 1989 had been continued and would be re-set to another date.

That at no time did he receive Notice from the Court, the Office of Civil Arbitration or from opposing counsel for any arbitration award herein, a Motion for Judgment, the presenting of a proposed judgment to Judge Clarence Cooper or a copy of any such judgment signed by Judge Cooper herein.

That between March 7, 1989 and June 20, 1989 the said judgment dated March 7, 1989 against defendant Susan Fasse

was not in the case file in the office of the Clerk of the Fulton Superior Court.

That this Affidavit is made from personal knowledge and may be used for any lawful purpose.

THOMAS V. CASSIDY

Sworn to and subscribed before me this 1st day of August 1989.

EXHIBIT "H"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PATRICIA B. HODGSON,	)
	)
Plaintiff,	)
	)
	) CIVIL
vs.	) ACTION
	) FILE
SUSAN FASSE,	) NO.
	) D-14463
Defendant.	)

GEORGIA, FULTON COUNTY

Personally appeared before me the undersigned authority duly authorized to administer oaths KIMBERLY A. WARDEN who after being sworn on oath deposes and states as follows:

That she is the Arbitration Administrator of the Office of Civil Arbitration, Fulton Superior Court.

That Local Rule 1000 (14) of the Fulton Superior Court provides in part

that the award (of the arbitrators) be published to the parties.

That the method by which the award of the arbitrators is published to the parties consists solely of:

i) Posting such award on a bulletin board outside the Court Administrator's office on the seventh (7th) floor of the Fulton County Courthouse; and

ii) Keeping a copy of same in the case file in the Office of Civil Arbitration and copies available for all parties.

iii) That this has been the policy of the office for three years.

That the award of the arbitrators is not mailed to counsel of record or the parties in a case. That such award is

not served on the parties or counsel of record by the Sheriff's Department.

That this Affidavit is given from personal knowledge and may be used for any lawful purpose.

This 31 day of July, 1989.

Sworn to and subscribed
before me this 31
day of July, 1989.

_____
Notary Public

_____
KIMBERLY A. WARDEN

EXHIBIT "I"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PATRICIA B. HODGSON,	)
	)
Plaintiff,	)
	)
	)CIVIL
vs.	)ACTION
	)FILE
SUSAN FASSE,	)NO.
	)D-14463
Defendant.	)

JUDGMENT

The above-styled case having come on for civil arbitration pursuant to Local Rule 1000 of this Court on February 3, 1989, and an award of the arbitrators having been entered that day for the Plaintiff in the amount of Fifty-One Thousand One Hundred Eighty-One and 25/100 ($51,181.25) Dollars,, and Ten Thousand Seven Hundred Ninety-Five and 24/100 ($10,795.24) Dollars attorneys'

fees, as evidenced by the Award attached hereto as Exhibit "A" and incorporated herein by reference and it appearing that thirty (30) days have elapsed and neither party has filed a demand for trial as required by the Local Rules of this Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment by consent against the Defendant in the sum of Fifty-One Thousand One Hundred Eighty-One and 25/100 ($51,181.25) Dollars, and Ten Thousand Seven Hundred Ninety-Five and 24/100 ($10,795.24) Dollars, attorneys' fees, together with costs.

SO ORDERED, this 7 day of March 1989.

CLARENCE COOPER
JUDGE, SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

EXHIBIT "J"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
ARBITRATION
&
CIVIL LITIGATIONS

SUSAN FASSE Plaintiff	))CiviL)Action)D-14463
vs.	)
PATRICIA B. HODGSON, Defendant	)

Consolidated with captioned Cases.
Formerly MO-1360, now as counter-claim
D-14463

ELIZABETH JANE FASSE Plaintiff	)Civil)Action
vs. PATRICIA B. HODGSON, Defendant	)D-26523)

Consolidated with captioned Cases.

PATRICIA B. HODGSON, Plaintiff, Counter-Defendant	)))Civil
vs. SUSAN FASSE Defendant, Counter-Plaintiff	)Action)D-14463))

MO-1360, now as counter-claim in D-14463.

MOTION FOR CONTINUANCE
CIVIL LITIGATIONS
JURY TRIAL CALENDAR

Defendant and counter-plaintiff SUSAN FASSE by ROBERT A. MEIER IV and THOMAS V. CASSIDY her attorneys respectfully petitions the court for its order of continuance of the above captioned consolidated matters which are set upon this court's jury trial calendar scheduled to commence April 11, 1989 upon the grounds of and as grounds for:

1. That SUSAN FASSE a party is providentially prevented from attending the jury trial of the consolidated by court order cases and the undersigned counsel for the party states he cannot safely go to trial without the presence of the absent party by reason of her illness and medical doctor's orders and directions, and further it is stated

and represented that the continuances of the party SUSAN FASSE have not been exhausted.

2. In support of same there is here attached the affidavit of Dr. John A. Shull, M.D., 929 Spring Creek Road, Suite #203, Chattanooga, Tennessee 37412 dated April 03, 1989, who is defendant and counter-plaintiff's Susan J. Fasse, treating physician (EXHIBIT "1", & A, B & C).

3. That this motion is made in good faith, upon good grounds shown and not for purpose of unwarranted delay.

4. That these matters are set before the court as cases scheduled to commence by trial by jury on April 11, 1989.

SUSAN FASSE, defendant
and counter-plaintiff.

BY_____
one of her attorneys so certifies.

ATTORNEYS FOR SUSAN FASSE:

ROBERT A. MEIER IV, and
THOMAS V. CASSIDY
2648 Sharondale Circle, N.E.
Atlanta, Georgia 30305
(404) 237-0494

EXHIBIT #1

JOHN A. SHULL, M.D.
OBSTETRICS AND GYNECOLOGY
929 Spring Creek Road
Suite 203
Chattanooga, TN 37412
(615) 855-0357

April 3, 1989

Affidavit

To Whom It May Concern:

This affidavit, narrative-letter medical report concerning my patient, Ms. Susan J. Fasse of Atlanta, Georgia is in supplement to my affidavit narrative medical reports of September 21, 1988, January 30, 1989 and March 1, 1989, concerning this patient which are here attached as Exhibits "A", "B" and "C" and which I incorporate by reference herein at this time and the contents of which I here and now reaffirm, reverify and subscribe to

once again.

On this date of April 3rd, 1989 and in medical consultation with Dr. C.Y. Liu, M.D., I conducted a physical and medical examination of Ms. Susan Fasse post surgically at my office in Chattanooga, Tennessee. The patient is progressing uneventfully from her most recent surgery of February 22, 1989 and in her recuperation is strictly following my medical recommendations to her. Ms. Fasse's prognosis is guarded.

In my March 1, 1989 verified narrative medical report I stated in behalf of myself and Ms. Fasse's treating chief surgeon, Dr. C.Y. Liu, M.D., that

> She (Susan J. Fasse) is presently under acute post surgical treatment in which she is only permitted

sedentary activities, and will be permanently and totally disabled as a result of same for at least the next eight (8) weeks, and Susan J. Fasse is physically and medically unable to participate in any court proceedings, depositions or brief writings for that period of time or thereafter until further notice from this office or myself and/or Dr. C.Y. Liu, M.D.

This is still my and Dr. Liu's opinion, however, we do extend this period of permanent partial disability until at least June 1, 1989. I will see the patient in the meantime and provide any necessary verified narrative medical reports requested of myself as will Dr. C.. Liu, M.D.

Yours very truly,

John A. Shull, M.D.

Subscribed and sworn to before me this
30th day of January, 1989.

EXHIBIT "A"

JOHN A. SHULL, M.D.
OBSTETRICS AND GYNECOLOGY
929 Spring Creek Road
Suite 203
Chattanooga, TN 37412
(615) 855-0357

September 21, 1988

TO WHOM IT MAY CONCERN:

Ms. Susan Jane Fasse of Atlanta, Georgia is under my treatment and care for diagnosed pathology and will be for an unforeseeable period into the future.

Due to this she is unable to physically or medically participate in any court proceedings or depositions until further notice from this office and myself.

Yours very truly,

John A. Shull, M.D.

EXHIBIT "B"

JOHN A. SHULL, M.D.
OBSTETRICS AND GYNECOLOGY
929 Spring Creek Road
Suite 203
Chattanooga, TN 37412
(615) 855-0357

March 1, 1989

Affidavit

To Whom It May Concern:

This affidavit, narrative-letter medical report concerning my patient, Ms. Susan J. Fasse of Atlanta, Georgia, is in supplement to my affidavit narrative medical report of January 30, 1989, concerning this patient which is here attached as Exhibit "A", and which I incorporate by reference herein at this time and the contents of which I here and now reaffirm, reverify and now subscribe to once again.

Pursuant to my medical recommendation as contained in paragraph four (4) of my attached affidavit-letter of January 30, 1989, and that of Ms. Fasse's co-treating physician and surgeon, Dr. C.Y. Liu, M.D., 4308 Brainerd Road, Chattanooga, Tennessee 37411, Susan J. Fasse did undergo major and general surgery under general anesthetic for in excess of four (4) hours by Dr. Liu and myself while an inpatient at Humana Hospital East Ridge, Chattanooga, Tennessee on February 22, 1989. This surgery was in the nature of a pelvoscopy within her abdominal and pelvic cavities during which procedures tumors were surgically removed from those portions of her anatomy. It is medically likely that she will within the near future require additional

medical surgery at these or contiguous sites.

She is presently under acute post surgical treatment in which she is only permitted sedentary activities, and will be permanently and totally disabled as a result of same for at least the next eight (8) weeks, and Susan J. Fasse is physically and medically unable to participate in any court proceedings depositions or brief writings for that period of time or thereafter until further notice from this office or myself and/or Dr. C.Y. Liu, M.D.

Yours very truly,

John A. Shull, M.D.

Subscribed and sworn to before me this 30th day of January, 1989.

EXHIBIT "C"

JOHN A. SHULL, M.D.
OBSTETRICS AND GYNECOLOGY
929 Spring Creek Road
Suite 203
Chattanooga, TN 37412
(615) 855-0357

January 30, 1989

Affidavit

To Whom It May Concern:

This is in supplement to my September 21, 1988, "To Whom It May Concern" letter concerning my patient, Ms. Susan J. Fasse of Atlanta, Georgia.

Ms. Fasse of Atlanta, Georgia continues under my treatment and care for diagnosed pathology and will be for an unforeseeable period into the future. Her diagnosed pathology although acute is continuing in nature.

Ms. Fasse did, indeed, enter as an inpatient, Humana East Ridge Hospital,

Chattanooga, Tennessee, on December 2, 1988, where I performed specialized/general surgery upon her in connection with her diagnosed pathologies. Her conditions of ill-being continue. Upon my physician order, she is presently on medication and will be for an unforeseeable period.

I saw Ms. Fasse in my office for examination and evaluation on January 23, 1989, and pursuant to this it is my recommendation that Ms. Fasse is in further need of inpatient surgery. Upon my direction she will see in consultation with myself Dr. C.Y. Liu, M.D., 4308 Brainerd Road, Chattanooga, Tennessee 37411, at 10:30 a.m., Feb. 8, 1989. My patient's, Ms. Fasse, surgery

will be carried out within the next thirty to sixty days.

With a view to the foregoing, Mrs. Susan Fasse is presently permanently partially disabled and physically and medically unable to participate in any court proceedings or depositions until further notice from this office or myself as her treating physician.

Yours very truly,

John A. Shull, M.D.

Subscribed and sworn to before me this 30th day of January, 1989.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PATRICIA B. HODGSON,	)
	)
Plaintiff,	)
	)
	)CIVIL
vs.	)ACTION
	)FILE
SUSAN FASSE,	)NO.
	)D-14463
Defendant.	)

BRIEF IN SUPPORT OF
MOTION TO SET ASIDE JUDGMENT

Comes now SUSAN FASSE, defendant herein, by and through her counsel and files her Brief In Support of Motion To Set Aside Judgment, respectfully showing the Court as follows:

FACTS

The facts herein are quiet simple and direct.

On August 4, 1988 the Honorable Clarence Cooper, Judge, Fulton County Superior Court entered an order for

arbitration herein. A copy of such order was sent to Defendant's counsel of record. The within case had already been consolidated with Case No. D-26523, styled Elizabeth Jane Fasse vs. Patricia Hodgson under a prior order of Judge Cooper; however the consolidated cases were ordered to arbitration separately from each other. Jury demands had been previously filed in both cases.

On August 29, 1988 a notice of the scheduling of such arbitration for October 21, 1988 was sent to Defendant's counsel of record.

Defendant was seriously ill and suffering from various pathologies. On October 17, 1988 she filed her Motion for Continuance from the October 21,

1988 arbitration, which Motion was not objected to by Plaintiff.

On October 20, 1988 Judge Cooper signed an order granting the continuance and on October 26, 1988 a copy of such order was sent to Defendant's counsel of record by the Office of Civil Arbitration. Such order re-set the arbitration for February 3, 1989.

Defendant was still suffering from her pathologies with further surgery being required (which was performed on February 22, 1989) and was unable by virtue hereof to attend or participate in the arbitration scheduled for February 3, 1989.

On January 31, 1989 she filed her Motion for Continuance from the February 3, 1989 arbitration, attaching

thereto her Affidavit and the Affidavit of her treating physician, which Motion was also not objected to by Plaintiff. Her counsel stated in such motion that he could not safely go to trial without her being present.

Her counsel contacted the Office of Civil Arbitration on February 1, 1989 and was told that the motion had been received, the hearing continued and that same would be re-set to another date.

No further action of record was taken on her said Motion for Continuance; however, the arbitration hearing was held on February 3, 1989 without her knowledge.

On February 3, 1989 the arbitrators awarded plaintiff the sum of $61,976.49 against defendant. NO COPY OF SUCH

AWARD WAS SENT TO DEFENDANT'S COUNSEL OR TO DEFENDANT.

Defendant therefore had no knowledge of such award and on March 7, 1989 plaintiff secured Judge Cooper's signature on a judgment awarding plaintiff $61,976.49 against defendant.

The said judgment was procured by plaintiff without the filing of a Motion for Judgment and without notice of any kind to defendant or her counsel of record in derogation of the Rules of this Court.

Local Rule 1000(14) of this Court requires that the award of the arbitrators be "published to the parties". The method of publication used by the Office of Civil Arbitration is limited to:

i) Posting such award on a bulletin board outside the Court Administrator's office on the seventh (7th) floor of the Fulton County Courthouse, and

ii) Keeping a copy of such award in the case file in the Office of Civil Arbitration.

Defendant contends that her Motion to Set Aside such judgment of March 7, 1989 should be granted pursuant to O.C.G.A. Section 9-11-60 on the following grounds:

i) Her Motion for Continuance filed on January 31, 1989, which was not objected to by Plaintiff, was required to be granted but was never ruled upon by the Court.

ii) The method of publishing the arbitration award violates the due

process clause of the Fourteenth Amendment to the United States Constitution and also violates the Constitution of the State of Georgia.

iii) A copy of the judgment was not sent by plaintiff's counsel to counsel for Defendant as required.

iv) The foregoing constitute nonamendable defects which appear on the face of the record herein and fraud, accident or mistake or the acts of the adverse party unmixed with the negligence of fault of Defendant.

ARGUMENT OF LAW

I.

THE COURT WAS REQUIRED TO GRANT DEFENDANT'S MOTION FOR CONTINUANCE

O.C.G.A. Section 9-10-154 provides as follows:

> If either party is providentially prevented from attending the trial of a case, and the counsel of the absent party will state in his place that he cannot go safely to trial without the presence of the absent party, the case shall be continued, provided that the continuances of the party have not been exhausted. (Emphasis added.)

Such statute has been the law in Georgia since at least 1863. Defendant' Motion for Continuance complied in all respects with the requirements of the statute and the Court was bound to grant her Motion. Yet, for some unexplained reason, the Court entered no ruling whatsoever on her Motion, apparently ignoring same.

Defendant contends that the existence of her said unobjected to Motion for Continuance which fully and completely complied with O.C.G.A. Section 9-10-154 and which was left unruled upon by the Court constitutes a nonamendable defect appearing on the face of the record requiring that the judgment entered herein be set aside.

II.

THE METHOD OF PUBLISHING THE AWARD OF THE ARBITRATORS VIOLATES THE DUE PROCESS CLAUSE OF THE UNITED STATES AND GEORGIA CONSTITUTIONS

The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, as well as Article 1 of the Constitution of the State of Georgia requires that a person's interest in life, liberty or

property not be taken without due process of law.

The leading case on the issue of procedural due process is Mullane vs. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

At page 314 in Mullane, supra, the United States Supreme Court noted that due process requires a State to provide

> notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

See also McKee v. Hegy, 703 F.2d 479 (10th Cir.1983).

In In Re Middle Plantation of Williamsburg, Inc., Debtor, 48 B.R. 789, 798 (U.S. District Court - E.D.

Va. 1985). the United States District Court stated as follows:

> The goal of the notice requirement of procedural due process is to provide notice reasonably calculated, under circumstances, to provide an interested party with actual notice. (Emphasis added.)

The United States District Court for the Northern District of Georgia (Sidney O. Smith, Judge) in Law vs. United States Department of Agriculture, 366 F.Supp. 1233, 1238 (1973) noted as follows, citing Mullane, supra, at p. 318:

> notice must be such as is reasonably calculated to reach interested parties.

In Mullane, supra, at p. 315, the United States Supreme Court also stated as follows:

> The means employed [for giving notice] must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.

In Mullane, supra, the United States Supreme Court held that notice by publication of a notice to settle the accounts of a common trust fund was not sufficient to inform beneficiaries of the rust whose names and addresses were known. See also Mennonite Board of Missions vs. Adams, 462 U.S. 791 (1983).

In the within case the names and addresses of counsel for the parties were well known and of record. Yet

pursuant to the Affidavit of Kimberly A. Warden, Arbitration Administrator, attached to the defendant's Motion to Set Aside Judgment as Exhibit "H", the means of publishing the award to the parties does not include mailing or otherwise sending a copy of the award of the arbitrators to counsel. Such means of publication is fatally flawed as not being reasonably calculated to apprise defendant of the award and afford her an opportunity to present her objections, Mullane, supra.

Since a demand for trial must be made within thirty (30) days of the award of the arbitrators, it is mandatory hat notice of such award be given to the parties. Local Rule 1000 simply does not provide a constitutionally acceptable means to give such notice.

The methods actually employed by the Office of Civil Arbitration (posting the award on a bulletin board on the seventh (7th) floor of the Fulton County Courthouse and keeping a copy of the award in the case file) do not satisfy the requirements of due process and are not calculated to actually give such notice as is required by law.

Lastly, the Georgia Court of Appeals in Hollis vs. Tanner, 177 Ga. App. 759, 341 S.E.2d 291, at page 292, cited the requirements of Mullane, supra, with approval and went on to say as follows:

> Wherever notice is required to be given in a judicial or administrative proceeding, due process requires that it be such notice as is reasonably calculated, under all the circumstances to enable the

interested parties to protect their rights. (Emphasis added.)

It is patently clear that Local Rule 1000 fails to comply with Mullane, supra, and Hollis, supra. Defendant simply did not receive notice reasonably calculated to enable her to protect her rights by filing a demand for trial within thirty (30) days.

What is so unfortunate in the matter is that the names and addresses of counsel were of record and all other orders (save the judgment itself) were mailed to counsel. It would be an easy matter to mail counsel a copy of the award and comply with due process requirements. Yet such procedures do not exist and defendant was denied due process. Accordingly the judgment must be set aside.

It is worth noting that the Georgia Legislature in enacting the Georgia Arbitration Code, O.C.G.A. Section 9-9-1 et seq., dealing with arbitration required by written agreement, clearly provided for adequate notice of the award of the arbitrators in the very area where Local Rule 1000 is so lacking. O.C.G.A. Section 9-9-10(a) states as follows:

> The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy of the award to each party personally or by registered or certified mail, return receipt requested, or as provided in the Agreement. (Emphasis added.)

A comparison of such Code Section with Local Rule 1000 clearly shows the

fatal deficiency of the Local Rule. The safeguards of due process contained in the notice requirements of the Code Section are completely lacking in the Local Rule. Local Rule 1000 and its application in making defendant aware of the award of the arbitrators fail to meet the requirements of due process and this Court should set aside the Judgment thus obtained against Defendant.

III.

THE JUDGMENT WAS OBTAINED WITHOUT NOTICE TO DEFENDANT

Apparently plaintiff (without giving notice of any kind to defendant or her counsel) presented the proposed judgment to the Court for its signature. Plaintiff wrongfully appeared before the Court ex parte and

communicated same to the Court without advising defendant's counsel and giving him an opportunity to be heard and present his objections thereto.

The foregoing constitutes fraud, accident or mistake or the acts of the adverse party unmixed with the negligence or fault of Defendant as contemplated by O.C.G.A. Section 9-11-60. The judgment should be set aside.

IV.

NO COPY OF THE JUDGMENT WAS SERVED ON DEFENDANT ON HER COUNSEL

The wrongfully obtained judgment was never served on defendant or her attorney as required by O.C.G.A. Section 9-11-5 thereby further depriving defendant of any opportunity to object or otherwise protect her interests.

Furthermore, as set forth in the affidavit of Thomas V. Cassidy, Esq. attached to Defendant's Motion herein as Exhibit "G", the said judgment was not even in the Court's file from at least March 7, 1989 through and including June 20, 1989, thus additionally preventing defendant from gaining knowledge of such judgment.

The foregoing constitutes fraud, accident or mistake or the acts of the adverse party unmixed with the negligence of fault of defendant.

CONCLUSION

Based on the facts and the law it is clear that defendant's Motion to Set Aside Judgment should be granted and defendant respectfully urges the Court to do so.

Respectfully submitted,

DAVID N. LEVINE, P.C

GA. BAR NO. 448400
ATTORNEY FOR DEFENDANT

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ELIZABETH JANE FASSE	)
	)
Plaintiff	)CIVIL
	)ACTION
	)FILE NO.
vs.	)D-26523
	)
PATRICIA B. HODGSON,	)
	)
Defendant.	)

JUDGMENT

The above-styled case having come on for civil arbitration pursuant to Local Rule 1000 of this Court on April 1, 1988, and an award of the arbitrators having been entered for the Defendant as to the Plaintiff's claim and for the Defendant in the amount of Five Thousand and 00/100 ($5,000.00) Dollars, attorney fees as to Defendant's Counterclaim; and it appearing that thirty (30) days have elapsed and neither party has filed a

demand for trial as required by the Local Rules of this Court.

It is hereby ordered, adjudged and decreed that Defendant have judgment against the Plaintiff as to the Plaintiff's Complaint and that the Defendant have judgment as to the Defendant's Counterclaim against the Plaintiff in the sum of Five Thousand and 00/100 ($5,000.00) Dollars, attorneys' fees, with costs against the Plaintiff.

SO ORDERED, this 6th day of June, 1988.

_____

CLARENCE COOPER,
JUDGE, SUPERIOR COURT OF FULTON COUNTY,
ATLANTA JUDICIAL CIRCUIT

IN THE SUPERIOR COURT OF FULTON COUNTY

ELIZABETH JANE FASSE	)
	)
Plaintiff	)CLERK'S
	)CASE
	) NO.
vs.	)D-26523
	)
PATRICIA B. HODGSON,	)
	)
Defendant.	)

Arbitration Case No. 87*449

OATH OF ARBITRATORS

We do solemnly swear (or affirm) that we will support, obey and defend the Constitution of the United Sates and the Constitution and laws of this State and that we will discharge the duties of our office with fidelity.

Joyce H. Pelphrey, Chairman
Jack N. Lincoln
Sonja L. Salo

AWARD

We, the undersigned arbitrators, having been duly appointed and sworn

(or affirmed), make the following award:

We find for the Defendant. All costs taxed to the Plaintiff. We award $5,000 attorneys' fees to the Defendant. We further recommend that the Plaintiff and Plaintiff's attorney be held in contempt for not appearing at Court ordered arbitration.

Date of Hearing: April 1, 1988

Date of Award: April 1, 988

Time consumed for Arbitration Hearing. 45 minutes.

notice; This Award will become the judgment of the court unless, within 30 days of the filing of this Award, a demand for trial is filed with the Court Administrator. If no such demand is timely filed, THE PREVAILING PARTY MUST PREPARE A JUDGMENT for the court

(attaching a copy of this award), and the Arbitrator's Award will become the judgment of the court.

CIVIL ARBITRATION PROGRAM
IN THE SUPERIOR COURT OF FULTON COUNTY

PATRICIA B. HODGSON,	)
	)
Plaintiff,	)
	)
	)CIVIL
vs.	)ACTION
	)FILE
SUSAN FASSE,	)NO.
	)D-14463
Defendant.	)

OATH OF ARBITRATORS

We do solemnly swear (or affirm) that we will support, obey and defend the Constitution of the United States and the Constitution and laws of this State and that we will discharge the duties of our office with fidelity.

Carol A. Levine, Chairman

Chandelle Summer

R. Michael Robinson

AWARD

We, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award:

We find for plaintiff in the amount of $51,181.25 for damages and $10,795.24 in attorney's fees.

Date of hearing 2-3-89

Date of Award 2-3-89

Time consumed for Arbitration hearing. 50 minutes.

NOTICE: This Award will become the Judgment of the court unless, within 30 days of the filing of this Award, a demand for trial is filed with the Court Administrator. If no such demand is timely filed, THE PREVAILING PARTY MUST PREPARE A JUDGMENT for the court

(attaching a copy of this award), and the Arbitrator's Award will become the judgment of the court.

HOW IT WORKS

The Fulton County Superior Court Civil Arbitration Rule provides

"All civil actions filed and seeking primarily money damages of twenty-five thousand dollars ($25,000) or less, or for damages in an unstated amount, shall be required to go through compulsory but non-binding arbitration. Any part to an action not otherwise qualifying may petition the Court that the case be scheduled for arbitration when it is not for the purpose of delay, the trial judge to whom the case has been assigned may order arbitration at any time at his or her discretion on any case whether or not it otherwise qualifies for arbitration or the Court may at

its discretion, remove a case from arbitration or limit the issues to be arbitrated: all cases alleging malpractice against health care providers shall be excluded form arbitration unless requested by a party or ordered by the Court."

When your case is filed it will be scheduled for arbitration on a day and time certain, normally on the first Friday 180 days after filing.

On the hearing day attorneys, parties and witnesses will appear at the appointed time and place (the courthouse or other nearby facility provided by the Court).

At the hearing, each case will be assigned by court personnel to a panel of three lawyer arbitrators who will have been impaneled that day. One of

the three will have been designated the Chief Arbitrator and will preside.

The rules provide for a less formal hearing where the rules of evidence are relaxed, as in TRO hearings. Cumulative witnesses and evidence will be discouraged. After the hearing, the arbitrators will confer and promptly make their written award which will become the final judgment of the Court unless a trial is demanded.

A party not satisfied with the award may, within 30 days of the arbitrator's hearing, seek to further negotiate a settlement with the other parties, or file a demand for trial de novo substantially as follows:

IN THE SUPERIOR COURT
OF FULTON COUNTY
STATE OF GEORGIA

Mary Contrary	)	
	)	Civil Action
Plaintiffs	)	No. D-00000
	)	
vs.	)	
	)	
John Doe	)	
	)	
Defendants.	)	

DEMAND FOR TRIAL DE NOVO

This action having come on for a hearing on April 24, 1987 before an arbitration panel, and an award having been returned, the plaintiff Mary Contrary demands a trial de novo on all issues of fact or of law which have been and will be raised in this action.

s/Name of Attorney

P.O. Box 20892
Atlanta, Georgia 30320

Any demand for trial de novo should be directed to:

The Office of the Court Administrator
Attention: Civil Arbitration Program
Fulton County Courthouse
136 Pryor Street, SW. Room 704
Atlanta, Georgia 30303

These cases will thereafter appear on the trial calendar, at their regular time and in their normal order.

For cases in which both parties are satisfied with the arbitration panel's award, the final step in the process is to submit a consent judgment substantially as follows:

IN THE SUPERIOR COURT
OF FULTON COUNTY
STATE OF GEORGIA

Mary Contrary	
	Civil Action
Plaintiffs	No. D-00000
vs.	
John Doe	
Defendants.	

CONSENT JUDGMENT

This case was arbitrated pursuant to Local Rule 1000 on June 26, 1987. The arbitrators returned an award on June 26, 1987 and no demand for trial de novo has been filed in the Office of the Court Administrator within thirty days of that award.

Now, hereafter, it is the judgment of the Court that the Defendant, John Doe, pay the Plaintiff, Mary Contrary the amount of $12,345.

s/Judge _____

Judge, Fulton County
Superior Court
Atlanta Judicial Circuit

It is the responsibility of the prevailing party to prepare and submit the consent judgment to the Court with a copy of arbitration panel's award.

Supreme Court, U.S.
FILED
MAR 6 1991
OFFICE OF THE CLERK

No. 90-1253

In The

Supreme Court of the United States

October Term, 1990

SUSAN J. FASSE and ELIZABETH FASSE,

Petitioners,

vs.

PATRICIA HODGSON,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Georgia

BRIEF IN OPPOSITION

JOHN WALTON HENDERSON, JR.
(Counsel of Record for Respondent)
H. BRIAN SAMS

MOFFETT AND HENDERSON, P.C.
1739 Cheshire Bridge Road, N.E.
Atlanta, Georgia 30324-1467
(404) 892-3936

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

I.

Whether the posting of an arbitration award in the county courthouse pursuant to Fulton Superior Court Local Rule 1000, after actual notice of the arbitration hearing was provided to Petitioners, and after Petitioners failed in their attempt to obtain a continuance, and after Petitioners failed to appear and participate in the arbitration hearing and failed to demand a trial *de novo*, after the hearing, satisfies due process and equal protection requirements under the Fourteenth Amendment of the Constitution of the United States.

II.

Whether Petitioner Susan Fasse, who had actual notice of an arbitration proceeding, can argue error as to the resulting arbitration award, when she failed to appear for the arbitration hearing, failed to obtain a continuance, failed to follow up on her Motion for Continuance, failed to inquire as to the entry of an arbitration award, and failed to make a request for a jury trial following entry of the arbitration award.

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CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED IN THE CASES

Article VI, Section IX, Paragraph I, Constitution of the State of Georgia 1983:

> The judicial system shall be administered as provided in this Paragraph. . . . (F)rom time to time . . . , the Supreme Court shall, with the advice and consent of the council of the effected class or classes of trial courts, by order adopt and publish uniform court rules . . . which shall provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions. . . .

STATEMENT OF THE CASE

Petitioners desire this Court to review the unanimous per curiam affirmance, without opinion, of the Georgia Supreme Court.

An adequate exposition of the facts is essential to the Court's determination of this matter. Petitioners have not fully disclosed all of the pertinent facts necessary for the Court's determination, thus Respondent submits her own statement of material facts for consideration by this Court.

This case has been pending as an active civil matter since 1984. (R3-8, Complaint). The original claim in the main action was for the conversion of several pieces of heirloom silver owned by the Respondent. On March 22, 1985, the Honorable Clarence Cooper, Judge of the Superior Court of Fulton County, entered a default judgment for Respondent against Petitioner Susan Fasse, hereafter ("Petitioner"), on the issue of liability. This judgment was entered after Petitioner failed to timely answer the

Respondent's Complaint. (R12-74, Default Judgment). However, due to the extraordinary pretrial maneuverings of the Petitioner, no hearing was held concerning the issue of damages until February, 1989.

At no time prior to the arbitration hearing scheduled for October 21, 1988, did Petitioner seek to set aside or vacate the default judgment entered by the trial court. Despite repeated pretrial delay efforts by Petitioner, Respondent was finally able to obtain a hearing on the issue of damages through the Fulton County Arbitration Program pursuant to Fulton Superior Court Local Rule 1000 scheduled for October 21, 1988. Petitioner sought a continuance for that arbitration hearing from the trial court which was granted. (R25-260, Order). The ground for the continuance was ostensibly the medical illness of the Petitioner. (R24-256, Motion for Continuance).

The arbitration hearing was subsequently rescheduled for February 3, 1989. Less than five (5) days prior to the scheduled arbitration, Petitioner untimely filed a motion for continuance of the arbitration with the trial court. (R26-261, Motion for Continuance). Again, the ground for the continuance was ostensibly the medical illness of the Petitioner. However, the trial court denied Petitioner's second request for a continuance of the arbitration hearing. (App. 1, Affidavit of H. Brian Sams). Petitioner is simply wrong in her contention that the second continuance was granted.

On February 3, 1989, the issue of damages was presented to a panel of arbitrators of the Fulton County Civil Arbitration Program. Respondent's counsel, H. Brian Sams, was in contact with the Office of Civil Arbitration

for the Superior Court of Fulton County before the February 3, 1989, arbitration hearing and was told by the Administrator of that office that Petitioner's counsel had not filed a motion for continuance with that office as required under Local Rule 1000. (App. 2) Mr. Sams also spoke with Stephanie Davis, Judge Cooper's law clerk, at or about this time. Ms. Davis stated that Petitioner's motion for continuance had been denied by the trial court. (App. 2)

On the day of the arbitration hearing, Petitioner and her counsel, Thomas V. Cassidy, failed to appear. Mr. Sams spoke with the Administrator's office at the Fulton County Civil Arbitration Office and was informed that it had not been contacted by Petitioner or her counsel. The motion for continuance having been improperly filed, no hearing on the motion having been scheduled or sought, and the motion having been denied by the trial court, Respondent presented her case to the arbitrators who then issued an award for Respondent pursuant to Local Rule 1000. The award was published on the seventh floor of the Fulton County Superior Court Building on the bulletin board where such awards are normally posted pursuant to Local Rule 1000(14).

Pursuant to O.C.G.A. § 9-11-58, and Local Rule 1000, the judgment for damages was presented with the arbitrators' award attached and was then entered by the trial court, and filed in the office of the Clerk of the Superior Court of Fulton County, on March 7, 1989, after the expiration of thirty days from the date of entry of the arbitrators' award. (R28-267, Judgment).

Contrary to Petitioner's contention, neither Petitioner nor her attorney had contact with the arbitration office on the date of the arbitration hearing. Petitioner did not appear at the arbitration hearing which occurred on February 3, 1989. Further, the Petitioner did not appear to ascertain the result of the arbitration hearing; nor did she file a demand for jury trial from the non-binding award that was entered the day of the arbitration. Finally, the Petitioner did not appeal from the judgment entered on March 7, 1989, by the trial court. Petitioner did not file her motion to set aside until approximately five months after the entry of the money judgment, and approximately four years after the entry of the judgment as to liability.

Moreover, Petitioners' lack of diligence regarding their legal affairs is not limited to the main action. The companion case of *Elizabeth Jane Fasse v. Patricia B. Hodgson,* is yet another example. There, the matter was ordered to arbitration by the trial court. Petitioner Elizabeth Fasse (Susan Fasse's mother and also represented by Thomas V. Cassidy) received actual notice of the arbitration hearing. Yet, without explanation, neither she nor her counsel bothered to attend the hearing.

In both cases, Petitioners failed to appeal the entry of judgment within the time provided by law. Instead, after the expiration of several months, Petitioners filed their motions to set aside the respective judgments. (R30-277). Upon hearing, and after consideration of all the evidence, the trial court entered an order denying Petitioners' motions to set aside. (R30-350). Petitioners subsequently appealed to the Supreme Court of Georgia.

On May 21, 1990, oral argument was had in the cases which had been consolidated on appeal before the Supreme Court of Georgia. Upon hearing, the Supreme Court entered a per curiam opinion affirming the judgment of the lower court, in which all justices concurred. Petitioners subsequently filed a motion for reconsideration which was denied by the Supreme Court of Georgia on November 7, 1990.

SUMMARY OF ARGUMENT

Petitioners' failure to exercise due diligence in pursuing and defending their cases has resulted in their present predicament. At every step of the judicial process, Petitioners have shown a blatant disregard for the rules of Court and have failed to safeguard their rights. Rather than any constitutional infirmity in Fulton Superior Court Local Rule 1000, the harm claimed by Petitioners is the product of their own failure to appear at the arbitration hearing after notice, and subsequent failure to make timely inquiry in order to demand a trial *de novo*.

The due process rights of notice and an opportunity to be heard were provided Petitioners under the compulsory, non-binding arbitration of Local Rule 1000. Petitioners do not dispute having notice prior to the arbitration, but state that the notice was constitutionally insufficient as to the posting of the arbitration award after the hearing. Due process requires notice of the pendency of the action – in this case, the scheduling of the arbitration hearing. This is quite different from the notice required regarding a post proceeding award.

Petitioners' arguments regarding equal protection also lack merit. Local Rule 1000 was enacted by the Georgia Supreme Court in 1985, and is rationally related to the goal of "speedy, efficient, and inexpensive resolution of disputes". There is no impermissible classification which is arbitrary or vague as to Petitioners or any class of civil litigants in Fulton County.

ARGUMENT

Any harm suffered by Petitioners resulted not from a violation of any constitutionally protected right, but rather from Petitioners' own failure to protect their rights and diligently defend their cases.

Petitioner Susan Fasse failed to appear for the arbitration hearing, failed to schedule a hearing on her Motion for continuance, failed to follow up on her Motion for Continuance, failed to inquire as to the entry of an arbitration award, and failed to file within thirty days after the arbitration award, a request for jury trial. Petitioner failed to do anything regarding the judgment until her motion to set aside, which came about five months after the judgment for damages was entered.

Petitioner does not dispute that she had notice of the arbitration hearing, nor that this hearing provided her with an *opportunity* to be heard. Rather, she argues that the posting of the arbitration award after she failed to exercise her opportunity to be heard denied her due process of law.

The posting procedure under Local Rule 1000 satisfies due process requirements under the Fourteenth Amendment to the Constitution of the United States. This Court has consistently held that due process, as mandated by the Fourteenth Amendment, requires that an individual be given notice and an opportunity to be heard before state action can deprive one of a property interest. *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950).

Petitioners contend that the posting of arbitration awards under Rule 1000 does not satisfy due process requirements under the United States Constitution and they cite several cases of this Court supposedly in support of this proposition. The cases cited by Petitioners deal specifically with the issue of notice as an element of due process. Respondent agrees that *"prior to an action* that will affect an interest in life, liberty or property protected by the due process clause, a state must provide *'notice of the pendency in the action and afford them the opportunity to present their objections.'* " *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314, 705 S.Ct. 652, 94 L.Ed. 865 (1950); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706 (1983). (Emphasis added).

There is no correlation between the facts of this case and the holdings in the cases raised by Petitioners. The only common denominator between this case and the fact patterns in the cases cited by Petitioners is that notice given in each was by publication. On this fact alone, Petitioners hope to successfully carry their due process argument. Both *Mullane* and *Mennonite* as well as *Tulsa Professional Collections Services v. Pope*, 45 U.S. 478, 108

S.Ct. 1340, 99 L.Ed.2d 565 (1988), require adequate notice "prior to an action." This is necessary to give the parties a fair opportunity to protect their interests.

Petitioners do not contest actual notice of the time, date, and place of the pending arbitration proceeding. Petitioners' argument pertains only to a *post* proceeding publication of the arbitration award. What the Fourteenth Amendment mandates is reasonable notice of the *"pendency of the action." Mullane, supra.* Petitioners were afforded ample "opportunity to be heard." What is apparent is that they failed to exercise that opportunity.

The requisite mandates and guidelines of due process "notice" were provided Petitioners under Local Rule 1000. Notice of the pending arbitration hearing was provided by publication in the Fulton County Daily Report, the county legal organ, as well as registered mail sent to counsel of record. The first arbitration hearing was scheduled for October 21, 1988, but was rescheduled for February 3, 1989, upon Petitioner's Motion for Continuance filed with the Superior Court. Petitioner's request for a continuance prior to the original, as well as rescheduled, arbitration hearings indicates that she, in fact, had notice of the proceeding. Thus, it simply cannot be said that Petitioner was not provided with notice and an opportunity to be heard prior to any state action involving her property interest.

Petitioner's request for a continuance prior to the February 3, 1989, hearing was denied by the trial court. Petitioner did not inquire as to the outcome of her Motion for Continuance or whether the arbitration hearing went forward or ascertain the result of the hearing. This is in

light of the fact that Rule 1000 unequivocally states that arbitration awards will be entered the day of the hearing and will be published to the parties through the posting mechanism in the Superior Court. Local Rule 1000(14). Petitioner knew, or should have known, that under Local Rule 1000 the judgment would be forthcoming if she did not act as required under the Rule and demand a jury trial within thirty days of the entry of the arbitration award. Local Rule 1000 clearly states that a ruling will be entered the same day as the arbitration and that a judgment by consent is proper if no jury demand is filed within thirty days.

The provisions of Local Rule 1000 which set forth when a civil action may be submitted for arbitration do not deny Appellants' equal protection of the laws as required under the Fourteenth Amendment of the United States Constitution. The Due Process Clause of the Fourteenth Amendment denies to states the power to place persons by statute or rule into different classes on the basis of criteria wholly unrelated to the object to the statute or rule. *Eisenstadt v. Baird*, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972). A particular classification made by the state is not objectionable as arbitrary merely because any inequality actually results. *Bay Side Fish Flower Company v. Gentry*, 297 U.S. 422, 56 S.Ct. 513 (1936).

Local Arbitration Rule 1000 of Fulton County, Superior Court (Atlanta Judicial Circuit) provides:

> All civil actions filed in seeking primarily money damages of $25,000 or less shall be required to go through compulsory but non-binding arbitration. *Any party to an action not otherwise qualifying may request arbitration when it*

> *is not for the purpose of delay;* the trial judge to whom the case has been assigned may order arbitration at any time at his or her discretion on any case whether or not it otherwise qualifies for arbitration; all cases alleging malpractice against health care providers shall be excluded from arbitration unless requested by a party or ordered by the Court.
>
> Local Rule 1000(1). (Emphasis added).

It is consistent with the Petitioners' prior conduct throughout the history of these cases, that they omit from their Brief (p. 39), the underlined portion of the above quotation which is determinative of their argument.

Local Rule 1000 was adopted by the Georgia Supreme Court on April 13, 1988. Article VI, Section IX, Paragraph 1 of the Georgia Constitution of 1983 contains the mandate that the Supreme Court of Georgia adopt and publish Uniform Rules provide for the "speedy, efficient, and inexpensive resolution of disputes and prosecutions." Local Rule 1000, which provides that civil actions involving primarily money damages up to $25,000 or in an unspecified amount be referred to compulsory but non-binding arbitration, was adopted as part of this mandate.

A review of the full body of Local Rule 1000 reveals no impermissible classification which denies Petitioners or others similarly situated equal protection of the laws. All civil litigants in Fulton County are provided with an opportunity under Rule 1000 to seek arbitration. Petitioners' argument that Rule 1000 is arbitrarily discriminatory and vague is nonsensical in light of the fact that Rule 1000 allows "any party to an action not otherwise qualifying may request arbitration when it is not for the purpose of delay. . . . " Local Rule 1000(1).

The party not seeking arbitration is not left without remedy under this Rule. A party who is unhappy with the case proceeding to arbitration, or the results handed down by the arbitrators, is free to file a demand for a trial *de novo* at any point within thirty days of the filing of the arbitration award. Local Rule 1000(16). Thus, no individual is denied an opportunity to have his "day in court" by virtue of the case having proceeded to arbitration under this Rule.

Normally, a legislative classification will not be set aside if any state of facts rationally justifying it is demonstrated or perceived by the courts. *U.S. v. Maryland Savings – Share Ins. Corp.*, 400 U.S. 4, 91 S.Ct. 16 (1970). Under Local Rule 1000, the opportunity for litigants to have a case submitted to arbitration, either of their own initiative or through judicial discretion, is rationally related to the goal of "speedy, efficient, and inexpensive resolution of disputes and prosecutions." The Supreme Court of Georgia recently considered the constitutionality of Local Rule 1000 against an equal protection attack and found the argument to lack merit. *Davis v. Gaoni*, 260 Ga. 450, 396 S.E.2d 218 (Ga. 1990).

CONCLUSION

The material issue in this case is whether the entry of judgment subsequent to the issuance of an arbitration award pursuant to Fulton Superior Court Local Rule 1000, and of which Petitioners had prior notice yet failed to appear or subsequently protect their rights, violated either due process or equal protection rights under the

Fourteenth Amendment. Petitioners have failed to prove the violation of a constitutionally protected right. Petitioners have not fulfilled their responsibilities to the judicial process in the litigation. At every turn they failed to abide by legitimate rules of Court and have ignored the requirements of the judicial process. Petitioners were not denied due process of law as they were provided actual notice of the arbitration hearing; nor does Local Rule 1000 violate equal protection rights of Petitioners as no impermissible classification has been shown to exist. Thus, the judgment of the trial court denying Petitioners' Motion to Set Aside and the per curiam affirmance without opinion by the Supreme Court of Georgia should be affirmed.

Accordingly, the Petitioners' prayer for a writ of certiorari to review the decision of the Supreme Court of Georgia in this case should be denied by this Honorable Court.

RESPECTFULLY SUBMITTED, this 6 day of March, 1991.

MOFFETT AND HENDERSON, P.C.
Attorneys for Respondent

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APPENDIX

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PATRICIA B. HODGSON,	:	
Plaintiff,	:	CIVIL ACTION FILE NUMBER: D-14463
v.	:	
SUSAN FASSE,	:	
Defendant.	:	

AFFIDAVIT

STATE OF GEORGIA
COUNTY OF FULTON

Personally appeared before me, the undersigned officer duly authorized to administer oaths, H. BRIAN SAMS, who after being duly sworn, states and deposes upon oath as follows:

1.

My name is H. BRIAN SAMS. I am over eighteen (18) years of age and the matters stated herein are of my personal knowledge. This Affidavit is given in support of the Plaintiff's Brief in Opposition to Defendant's Motion to Set Aside Judgment in the above-styled matter.

2.

I am a duly licensed, practicing attorney-at-law in and for the State of Georgia. I am a partner with the law firm of Moffett and Henderson, P.C. In that capacity, I represent the Plaintiff in the above-styled lawsuit.

3.

As one of the attorneys for the Plaintiff, I was responsible for presenting Plaintiff's case before the Panel of Arbitrators on February 3, 1989.

4.

On or about February 3, 1989, I called the office of the Civil Arbitration Program and spoke with Kim Warden who told me that no motion for continuance of the hearing had been filed as is required by Local Rule 1000.

5.

On February 3, 1989, I again spoke with Kim Warden's office, wherein I was informed that no contact had been made with that office by Defendant or her counsel.

6.

Prior to the hearing, I was informed by Judge Cooper's office that the motion for continuance had been denied.

7.

On April 1, 1988, while at the Fulton County Courthouse waiting to receive the arbitrator's decision in *Elizabeth Jane Fasse v. Pat Hodgson*, Case #26523, I was confronted by Mr. Sallee in the jurors waiting room on the fourth floor of the Fulton County Courthouse. Mr. Sallee said he came down to the courthouse in response to a call he received from Lee Lawson's office to see what

he could do, even though he had withdrawn as counsel, after Mr. Cassidy failed to appear in this arbitration hearing as well. Mr. Sallee told me that Mr. Cassidy had five DUI offenses and that he had represented Cassidy on his 3rd, 4th, and 5th DUI offenses, and that Cassidy was ordered not to leave the state. Mr. Sallee also stated that Mr. Cassidy was supposed to go into rehabilitation for drinking in the near future, although he didn't know the specific dates.

8.

Later, in May of 1988, Mr. Sallee telephoned me and told me that the state bar was investigating Mr. Cassidy.

Further Affiant sayeth not.

This 16th day of August, 1989.

/s/ H. Brian Sams (SEAL)
H. Brian Sams

Sworn to and subscribed before me,
this 16th day of August, 1989.

/s/ Suzanne Lane
Notary Public
My Commission Expires: ___

My Commission Expires December 3 1989

Fulton Superior Court
Atlanta Judicial Circuit
Local Rule No. 1000

CIVIL ARBITRATION

1.

All civil actions filed and seeking primarily money damages of twenty-five thousand ($25,000) dollars or less shall be required to go through compulsory but non-binding arbitration. Any party to an action not otherwise qualifying may request arbitration when it is not for the purpose of delay; the trial judge to whom the case has been assigned may order arbitration at any time at his or her discretion on any case whether or not it otherwise qualifies for arbitration; all cases alleging malpractice against health care providers shall be excluded from arbitration unless requested by a party or ordered by the Court.

2.

Upon filing the complaint with clerk, the docket clerk shall stamp all cases, including service copies, with an ad damnum of twenty-five thousand ($25,000) dollars or less with the date and time for arbitration, except medical malpractice actions against health care providers.

3.

The Court Administrator shall schedule and set dates for arbitration hearings and shall furnish such dates to the docket clerk to assign on a basis of the order of filing;

the Court Administrator shall set such arbitration dates not less than 180 days subsequent to filing and as close to such period as is reasonable and practical so that arbitration hearings shall be held approximately 180 days after filing.

4.

The Court Administrator or his designee shall determine the number of cases to be set on a date and during each period during such date; in accordance with such schedule, the docket clerk shall assign cases to the periods 9:00 A.M., 10:00 A.M., 11:00 A.M., or 2:00 P.M. in the sequence of their filing.

5.

The Court Administrator or his designee shall arrange for places for arbitration hearings in the courthouse or adjacent thereto for each hearing date; the locations of such arbitration hearings will be posted daily in the same places that notices of the presiding judge are displayed.

6.

Lawyers willing to serve as arbitrators will so notify the Court Administrator (or designee) by means of a written notice which will indicate years of trial experience and any training or experience in arbitration. Lawyers without training/experience in arbitration will be required to complete a basic seminar prior to arbitrating cases. The Court Administrator (or designee) will compile

two lists of arbitrators: Lawyers with any trial experience in five consecutive years and all other lawyers willing to so serve. Such lists shall be updated annually.

7.

An arbitration panel shall consist of the Chief Arbitrator, who shall preside, and two arbitrators; the Chief Arbitrator shall be randomly selected from the list of lawyers with five consecutive years of trial experience. All arbitrators are to be selected and assigned randomly to a panel.

8.

The scheduling of a case for arbitration hearing shall not remove the case from assignment to a judge, discovery, motions practice or regular court procedures. From the time of filing until the arbitration date, parties may carry on discovery; all discovery disputes and other motions shall be determined by the judge to whom the case has been assigned in the regular practice under the uniform local rules; discovery or motions pending shall not be a grounds for the removal of a case from an arbitration date; a continuance from arbitration may only be granted by the judge to whom the case has been assigned for legal excuse or good cause shown. Any discovery motions not previously ruled upon prior to the Friday before the arbitration hearing date, shall be deemed waived unless presented by the movant to the presiding judge for determination on such date and the presiding judge shall enter such order as is appropriate

after hearing the motion. Such motions are limited to five minute oral argument per side.

9.

If the case is settled prior to the arbitration date, the counsel for the parties shall notify not only the calendar clerk of the Judge to whom the case has been assigned but also the Court Administrator or his designee. The Court Administrator shall schedule sufficient arbitration panels on each date to handle the remaining arbitration cases.

10.

On the arbitration date, the Court Administrator or his designee shall call the calendar of the arbitration cases at each preset time and shall assign such cases to an arbitration panel as such panels become available.

11.

The arbitration panel shall swear witnesses and receive evidence; the rules of evidence shall be the same as followed in equitable proceedings or at temporary restraining order hearings, except as otherwise specified herein. Thirty (30) days prior to the arbitration hearing date, each party must specify in writing and provide copies of all documents to be introduced in evidence:

a. Police, fire or accident reports;

b. Medical reports, hospital records, or similar documents;

c. Medical bills;

d. Lost wages, lost profits;

e. Property repairs bills, estimates for repairs;

f. Business records;

g. Correspondence;

h. Ordinances, rules, or regulations;

i. Contracts, invoices, demand letters, notes, or negotiable instruments.

The opposing party must, by written demand made at least ~~twenty~~ (20) days prior to the arbitration date, state for which document he or she will require live testimony for purposes of cross-examination or of attacking its authenticity. If the arbitrators decide that such live testimony is unnecessary for cross-examination, then the party requiring such witness to be in attendance rather than allowing the document shall be liable for such person's witness fee and travel expenses. Documents unobjected to prior to the twenty (20) days shall be deemed authenticated but subject to objections as to admissibility at the time of the hearing. Parties are free to make stipulations or to waive any rules of evidence by agreement for purposes of such arbitration hearing only. Failure to serve such service copies in timely fashion prior to the hearing will require such party to have the documents authenticated as provided by law at the time of the hearing unless all parties agree to waive the service requirement.

12.

At the arbitration hearing, the Chief Arbitrator shall rule on all objections, motions and admissions of

evidence; the Chief Arbitrator may confer with the other arbitrators prior to making any rulings but is not required to do so.

13.

Arbitration hearings are intended to be brief evidentiary outlines of the case and not formal trials. Each side will be limited to a five (5) minute opening statement unless there is a conflict of interest between the parties of such side, in which event each party with a conflict of interest may make a separate opening of five (5) minutes; closing argument shall be fifteen (15) minutes per side unless there is a conflict of interest between the parties of such side, in which event each party with a conflict of interest may make a separate argument of ten (10) minutes.

14.

At the close of the arbitration hearing, the arbitrators shall confer and return a written award for one side or the other which shows the damages, if any awarded, and which shows any dissent. A simple majority of the arbitrators is required to return an award. The award is published to the parties, and the written award filed with the Court Administrator or his designee on the day of the hearing. No written findings of fact and conclusions of law are required. The judge to whom the case has been assigned shall not be advised of the award unless agreed to by all parties until after verdict.

15.

Arbitration hearings are not officially reported; counsel, at his or her own expense, may engage a private court reporter to record the proceedings.

16.

Either party may file a demand for trial within thirty (30) days of the filing of the arbitration award with the Court Administrator or his designee who shall make a notation and entry of the date of filing the award and of the trial demand; the demand for trial shall contain the style of the case, the case number and a demand for jury or non-jury trial; filing such demand for trial will entitle all parties to a *de novo* trial of all issues of fact or of law which were raised or could be raised in the arbitration hearing; such case will be tried before the judge to whom the case has been assigned in the ordinary procedure and course of time as if no arbitration hearing had been held; arbitration proceedings shall not delay or impede the normal trial of such case.

17.

Failure or refusal to file within thirty (30) days a demand for trial by all parties shall constitute a waiver of trial by jury or non-jury and be deemed a consent to the arbitration award; after the expiration of such thirty (30) days without the filing of a demand, any party may move for the entry of a consent judgment and dismissal with prejudice based upon the arbitration award.

18.

Where a party, after demand for trial, tries the case to a judge or jury and does not substantially improve said party's position, then the trial judge has the discretion to tax the arbitration panel's fees against said party's; for purposes of this rule, substantially improving a party's position shall mean either (a) reversal of the award, or (b) increase or decrease of the award by 15% or more depending upon whether the party demanding trial is a plaintiff or a defendant.

19.

For purposes of taxing an arbitration panel's fees, it shall be determined by dividing the total dollar amount paid to the arbitrators who heard this case by the total number of cases decided by such arbitration panel on that date.

20.

Arbitrators shall be paid two hundred ($200) dollars each for a full day's work and one hundred ($100) dollars if all work is concluded prior to 12.00 noon; each arbitrator shall sign at the conclusion of the day a statement as to the time served. Any lawyer serving as arbitrator may waive such compensation and, at the end of the year, he and his firm will be publicly recognized for all such public service contributed during such calendar year.

21.

No arbitrator may serve more than four (4) times during any one calendar year.

22.

If the Court Administrator or his designee receives two or more complaints as to an arbitrator's conduct from another arbitrator, a party or counsel, then inquiry shall be made to the other arbitrator or arbitrators; if two or more complaints are made, the Court Administrator or his designee shall notify said arbitrator in writing of the charges and ask if he or she wishes a hearing; if a hearing is requested, it shall be held before a panel of arbitrators selected in the normal fashion and evidence of the conduct presented; if the charges are found justified or if no hearing is requested, the lawyer's name shall be stricken from the arbitration rolls.

Supreme Court, U.S.
FILED
MAR 20 1991
OFFICE OF THE CLERK

No. 90-1253

In The

SUPREME COURT of the UNITED STATES

October Term 1990

SUSAN J. FASSE and ELIZABETH FASSE,
PETITIONERS.

v.

PATRICIA HODGSON, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI
TO THE STATE OF GEORGIA SUPREME COURT

REPLY

Rule 15.6

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ARGUMENT

I.

Due Process "actual" Notice

Respondent in her BRIEF IN OPPOSITION presents no authorities contrary to this Court's due process "actual" notice requirements as held in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (70 SC 652) (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (103 SC 2706) (1983); *Tulsa Professional Collection Services, Inc. v. Pope, Executrix Of The Estate Of Pope*, 485 U.S. 478 (1988) and *City of New York v. N.Y., N.H. & H.R. CO.*, 344 U.S. 293, 294, 296, 297 (1953). The minimum "notice" being U.S. postal mailing, which was not done here.

The respondent's only argument in opposition to due process "actual" notice is the allegation that if an entity

"hears" or "knows" or has knowledge of the court proceeding than this satisfies due process "actual" notice requirements and shifts the burden to the knowledgeable entity to *"Bird Dog"* the court house to become aware of orders, awards and judgments that may be either adverse or favorable.

This contention has been specifically rejected by this Court in *City of New York v. N.Y., N.H. & H.R. CO.*, 344 U.S. 293, 294, 296, 297 (1953) as not comporting with 14th Amendment U.S. Constitution and *Mullane*, *Mennonite* and *Tulsa*, supra, due process "actual" notice requirements.

City of New York v. N.Y., N.H. & H.R. CO., 344 U.S. 293, (1953) at pages 294, 296 and 297:

> *" ... creditors had to depend for their notice on two once-a-week publications of the order in five daily newspapers, one of which was the Wall Street*

Journal. New York thus received no copy of the bar order. Its lien claims were never filed. (Note: The "bar order" refers to the date for timely filing a claim, objections to dischargeability and\or complaint to determine dischargeability.)

"Notice by publication is a poor and sometimes a hopeless substitute for actual service of notice. Its justification is difficult at best. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306. No ... excuse existed to justify subjecting New York's claims to the hazard of forfeiture arising from "constructive notice" by newspaper.

"Nor can the bar order against New York be sustained because of the city's knowledge that reorganization of the railroad was taking place in court. The argument is that such knowledge puts a duty on creditors to inquire for themselves about possible court orders limiting the time for filing claims. But even creditors who have knowledge of a reorganization have a right to assume that the statutory "reasonable notice" will be given them before their claims are forever barred.

Reversed.

"Mr. Justice Frankfurter and Mr. Justice Jackson ... agree

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with the opinion that the notice is not adequate support for an order destroying the liens." (Emphasis added)

See also these cases citing and following as controlling *City of New York*, supra, and *Mullane*, *Mennonite*, and\or *Tulsa*, supra: *In Re Rogowski*, 115 B.R. 409, 410, 412, 413, 414, 415 (Bkrtcy.D.Conn. June 21, 1990); *U.S. Small Business Admin. v. Bridges*, 894 F.2d 108, 109, 111, 112 (5th Cir. 1990); *In Re C.S.T. Const. Co., Inc.*, 231 B.R. 840, 842, 843 (Bkrtcy.N.D.Illinois, E.D. 1982).

Whether petitioner Susan's January 31, 1989 Motion for Arbitration Continuance on the providential grounds, with medical doctors' affidavits, of her female major pelvoscopy within her abdominal and pelvic cavities for the surgical removal of tumors while an in patient and under general anesthetic in

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surgery in Chattanooga, Tennessee, (A. 178, 179, 180) was granted or not granted, it was, (A. 161) is irrelevant to the issue of whether 14th Amendment due process "actual" notice of the entry of the arbitration award was satisfied.

The triggering event that set in motion the mechanical forces which deprived petitioners of their owner interest in their property was the entry of the arbitration awards without due process "actual" notice pursuant to *Mullane*, *Mennonite*, *Tulsa* and *City of New York*, supra, by personal or mail service, and by only "publishing" the awards on a limited access 7th floor of the court house bulletin board and keeping another copy of the awards locked in the private 7th floor office of the Civil Arbitration Administrator is not enough. See Ms. Kimberly A. Warden, Arbitration

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Administrator, July 31, 1989 affidavit. (A. 164).

The Georgia Supreme Court's own Local Rule 1000 paragraph 14 (A. 118, 119) does not give the least suggestion or slightest hint of what "publishing" the award means. Even if the rule said, *"The award will not be mailed or served personally upon the parties nor filed with the clerk of the court nor printed in a newspaper of general circulation within the county, but only put on a wall in a court house"*, it would not be enough to satisfy due process "actual" notice. Query: which court house? There are three (3) in downtown Atlanta, Fulton County, to wit; the Superior Court House, the State Court House and on down the street a few blocks the City of Atlanta Court House. Due process "actual" notice has been totally ignored by the Georgia Supreme Court's special judicial

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legislative Rule and is not only repugnant to the U.S. Constitution, 14th Amendment but to the Constitution of the State of Georgia, Article 3, Section 6, Paragraph 4 (a) and (c); (Reply Appendix page 14 *[hereinafter: "R.App."]* and Article 1, Section 1, Paragraph 2. (R.App. 15).

The Georgia Supreme Court holds that in this Southern State of the Union only pleadings are required to meet the due process "actual" notice test of mailing or personal service and specifically excludes judgments, orders and awards that deprive a citizen of "his life, liberty or property without due process of law". SEE: ***Davis v. Gaona***, 260 Ga. 450, 451, 454; 396 S.E.2d 218 (1990) cited by respondent at page 11 of her brief. This decision alone is persuasive reasoning for this Court's supervision

and ruling that the judgments herein should be reversed and that the due process "actual" notice provisions of Georgia mandatory arbitration Rule 1000 are unconstitutional. In ***Davis***, supra, the Georgia Supreme Court in a convoluted decision of judicial diabolical reasoning passes on the constitutionality of its own State-wide local rule 1000 and "OK's" it. Liken to asking a waiter how the food on the menu is when he has an interest in the restaurant. Here is a part of the Georgia Supreme Court's reasoning at page 454 that the "publication" requirement of Local Rule 1000, paragraph 14 satisfies U.S. Constitution 14th Amendment and ***Mullane***, ***Mennonite***, ***Tulsa*** and ***City of New York***, supra, due process "actual" notice requirements: *"Appellant contends that the rule is void because it requires only that the award be published to the*

parties. Appellant says this violates OCGA, sec. 9-11-5 (b) which requires that after original service all subsequent pleadings be sent by mail. An arbitration award is not a pleading within the meaning of OCGA, sec. 9-11-5 (b)." {Note: neither is a final judgment or an order of court at any stage.} *"Appellant further complains that the award is filed with administrator of the arbitration program rather than with the clerk of the court. Rule 1000 provides that if no demand for trial de novo is made within 30 days of the award any party may move for the entry of a consent judgment and dismissal with prejudice based upon the award. If this occurs, the judgment would be filed with the clerk of the court as would any other judgment."* {What one wonders appalled of this "Catch 22" provision is: if the motion for

judgment is filed pursuant to Local Rule 1000, paragraph 17 (Res.App. 10) the arbitration award must be attached to the motion for judgment and thus becomes a pleading but due process "actual" notice of it does not have to be given, even though this is more than 30 days after the entry of the arbitration award and the offended party has lost his automatic right to demand a trial de novo and thus his property has been cast to judicial and executive execution by fiere facias. On the other hand the filing of the final judgment with the clerk, which was not done in these cases, *[in petitioner Susan's case it disappeared from the court records entirely, a fact not disputed by respondent* (Petition pages 27 and 28)*]* "*based upon the arbitration award*" is long after the fact and all, if any, procedural due process "actual" notice guarantees and rights have

evaporated and been extinguished. Even court house *"Bird Dogging"* would not have saved the day for petitioners and other citizens so situated in this imbroglio.

This Court is going to have straighten all of this out. If the State of Georgia is going to enter into this area it must do it in an equitable and constitutionally correct manner or not at all. The stakes are too high with a view to the American way of life.

II.

Equal Protection

The States' obligation to each citizen and entity to the "equal protection of the laws" requires that there be no "state action" depriving any classified persons or groups of due process of law or due process "actual" notice, and that any classification be reasonable and uniform and in furtherance

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of the states' exercise of its police power.

The Georgia State-wide mandatory arbitration Rule 1000 with its arbitrary classifications of litigants' cases as qualifying or not qualifying for arbitration and the classifying of arbitration litigants' due process "actual" notice to "publication" only, versus other litigants due process "actual" notice to mailing and personal service is of itself violative of the "equal protection of the laws" clause of the U.S. Constitution 14th Amendment where in both instances the end result is a final judgment affecting vested property interests. ***Reed v. Reed***, 404 U.S. 71, 75-76 (1979).

Rule 1000 is judicial legislation which is not an exercise of the police power of the State of Georgia.

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Respondent cites ***United States v. Maryland Savings-Share Insurance Corp.***, 400 U.S. 4 (1970) which involves a federal statute, the Internal Revenue Code, 26 USC 501 et.seq., containing a "grandfather clause" as to exemption from a tax pre-enactment property rights. It has nothing to do with "state action" and the 14th Amendment "equal protection clause". The 5th Amendment, U.S. Const., does not contain and "equal protection of the laws" provision. Respondent's attorneys should know this.

Cited, also, by respondent is this Court's 1935 ***Bayside Fish Co. v. Gentry***, 297 U.S. 422 (1935) which interpreted as valid a California public law enacted pursuant to the State's police power with the purpose of conservation of its fish supply for human food. A cite far removed from the issues of this action.

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If the Georgia Supreme Court's purpose in enacting arbitration Local Rule 1000 with its lack of 14th Amendment due process "actual" notice, as alleged by respondent, was for "speedy, efficient and inexpensive resolution of disputes and prosecutions" it would be underinclusive and would not only invidiously discriminate against those litigants whose cases were arbitrarily sent to arbitration, but also be overbroad with respect to those litigants whose cases were not cast to arbitration and thus at all stages of their litigation be assured of due process "actual" notice by U.S. mailing or personal service. ***Eisenstadt v. Baird***, 405 U.S. 438, 447, 451 (1972). *[Cited by respondent. Why, it is not known.]*

The Georgia Supreme Court, on certification from the U.S. 11th Circuit

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Court of Appeals, in *Celotex v. St. Joseph Hospital*, 259 Ga. 108, 110 (376 S.E.2d 880) (1989) adopts this Court's reasoning in *Eisenstadt*, supra, in invalidating a State statute lifting a statute of limitation as to certain classified claims as violative of the Georgia Constitution "equal protection of the laws" guarantee. Article 1, Section 1, Paragraph 2. (R.App. 15)

III.

Scandalous, Irrelevant and Immaterial Matters in Respondent's Brief Warrants It Be Disregarded and Stricken

United States Supreme Court Rule 24.6:

"A brief must be ... free from burdensome, irrelevant, immaterial and scandalous matters. A brief not complying with this paragraph may be disregarded and stricken by the Court."

Respondent's Brief In Opposition and the attached affidavit of attorney H. Brian Sams (Res.App. 2,3) contains scandalous, untruthful, irrelevant and

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immaterial matters offered only to embarrass and prejudice this Court against petitioners and their counsel and violates this Court's Rule 24.6 and respondent's brief should be disregarded and stricken. Respondent's attorneys employed this same tactic in the trial court and were orally admonished in open court by Trial Judge C. Cooper to "knock off" this reprehensible conduct. They again employ it before this Court.

Petitioners and their attorneys at the trial court level immediately responded to this censurable attorneys' action with the filing of petitioner's verified Motion and Brief Pursuant To Georgia Uniform Court Rules, Rule 21 (R.App. 5, 6, 7, 8) and (R.App. 17) on August 17, 1989. On August 26, 1989 the trial court, before it could set for hearing petitioner's Rule 21 Motion, denied petitioner Susan's motion to set

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aside judgment (App. 123). Due to respondent's attorneys continuing garnishment of petitioners' assets in their law firms' name (R.App. 12, 13), when neither the law firm or respondents' attorney were judgment creditors (App. 167, 204) petitioner Susan Fasse in order to stop this and remove nisi prius jurisdiction was required to prematurely file her Notice Of Appeal four (4) days later on August 30, 1989. (R.App. 9-11) Notwithstanding the outcome of these proceedings upon final remittitur of these actions, petitioners Georgia Uniform Court Rule 21 Motion (R.App. 5-8) will be tried and otherwise appropriately dealt with by an appropriate agency of Georgia state government. These attorneys' conduct demonstrate the desperation of their client's position on these appeals and their own financial

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interest in the outcome of these cases, since these attorneys will have to pay back to one or both of the petitioners the monies they have already taken by their questionable garnishment maneuvering should their client lose. (R.App. 12, 13)

For a further but brief narration of this matter the Court is here referred to *"End Note One"* infra. (Reply Appendix 18)

CONCLUSION

Petitioners request the relief first before prayed in their Petition-Brief.

Respectfully Submitted.

Thomas Vincent Cassidy
Attorney for Petitioner

2648 Sharondale Circle, N.E.
Atlanta, Georgia 30305
404/237-0494

March 20, 1991
Atlanta, Georgia

Appendix

054671

CERTIFICATE OF ADMISSION

TO THE BAR OF ILLINOIS

I, JULEANN HORNYAK, Clerk of the Supreme Court, State of Illinois, do hereby certify that

THOMAS VINCENT CASSIDY

has been duly licensed and admitted to practice as an Attorney and Counselor at Law within this State; has taken the required oath to support the CONSTITUTION OF THE UNITED STATES and of the STATE OF ILLINOIS, and also the oath of office prescribed by Law, that said name was entered upon the Roll of Attorneys and Counselors in my office on the 10th day of October A.D. 1957 *and is in good standing, so far as the records of this office disclose*.

IN WITNESS WHEREOF, I have hereunto placed my hand and affixed the seal of said Supreme Court, at Springfield, in said state,

this 23rd day of January A.D. 1991.

/s/ JULEANN HORNYAK

Clerk

TO:
Thomas Vincent Cassidy
Attorney at Law
2648 Sharondale Circle, NE
Atlanta, Georgia 30305

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

To Applicant for Admission to Practice:

I am pleased to notify you on behalf of the Justices that the motion for your admission to practice was granted and that you are now a member of the bar of the Court and an officer of the Court. As such you will have all the privileges of membership which include the use of the extensive law library located on the third floor. If my office can be of assistance to you in any matter that falls within our competence, we will be glad to do so.

Your certificate will be mailed in approximately 12 weeks.

You were admitted on February 19, 1991.

Joseph F. Spaniol, Jr.

Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

P. B. HODGSON, Plaintiff,	]	CIVIL ACTION
vs.	]	NO. D-14463
SUSAN FASSE, Defendant.	]	Filed In Office Aug. 17, 1989

MOTION AND BRIEF PURSUANT TO GEORGIA UNIFORM COURT RULES, RULE 21

Comes now Susan Fasse, defendant herein, by and through counsel of record David N. Levine and respectfully moves this Court pursuant to Rule 21 of Georgia Uniform Court Rules as follows:

1.

Defendant shows that the following pages of Plaintiff's Brief in Opposition to Defendant's Motion to Set Aside Judgment should be stricken, sealed or otherwise have access limited by reason of the facts herein after SET FORTH:

(i) Pages 2, 3 and 4 of said Brief;

and:

(ii) Paragraphs 7 and 8 of the Affidavit of H. Brian Sams, Esq. attached thereto.

2.

Defendant shows that such pages and said paragraphs of such affidavit contain obnoxious, incendiary, prejudicial, illegal, and most importantly totally irrelevant and immaterial matters.

3.

That such matters contained therein were inserted *solely* to *harm and embarrass other counsel in this* case and to attempt to prejudice the Court against defendant's Motion to Set Aside Judgment.

4.

That such matters set forth therein further contain alleged statements made by one attorney to another which are in violation of the attorney-client privilege.

5.

That plaintiff's counsel well knows that such statements were plead with *no good or just cause or reason*.

6.

That defendant is entitled to an award of reasonable attorney's fees herein.

Wherefore, defendant prays that the Court inquire into the matter and strike such pleadings, seal same or in the alternative, limit access thereto and addition, award defendant reasonable attorney's fees.

_____/s/ David N. Levine_____
DAVID N. LEVINE
Attorney for Defendant

Georgia, Fulton County

Personally appeared before me the undersigned authority SUSAN J. FASSE who after being sworn, on oath deposes and

states that the allegations contained in the with and foregoing Motion Pursuant to Rule 21, Georgia Uniform Court Rules are true and correct.

This 17th of August, 1989.

___/s/ Susan Fasse_____
SUSAN FASSE

Sworn to before me
this 17th day of August, 1989.

_____/s/ David N. Levine_____
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served counsel for plaintiff with a copy of the within Motion by mail at his office address as provided by law.

This 17th day of August, 1989.

___/s/ David N. Levine_____
DAVID N. LEVINE
Attorney for Defendant

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

P. B. HODGSON, Plaintiff,	]	CIVIL ACTION
vs.	]	NO. D-14463
SUSAN FASSE, Defendant.	]	Filed In Office Aug. 30, 1989

NOTICE OF APPEAL

Notice is hereby given that Susan Fasse defendant above named, hereby appeals to the Georgia Supreme Court from the Order denying her Motion to Set Aside Judgment entered in this action on the 26th day of August, 1989.

The Clerk will please omit from the record on appeal all discovery motions, discovery filings and discovery orders.

This Court, rather than the Court of Appeals has jurisdiction of this case on appeal pursuant to Article 6, Section 6,

paragraph II of the Constitution of the State of Georgia for the reason that the Georgia Supreme Court has exclusive appellate jurisdiction in a case where the constitutionality of a law is in question. At issue here is whether Local Rule 1000 of the Fulton Superior Court is violative of the due process clause of the Constitutions of the United States of America and the State of Georgia in its application.

This 30th day of August, 1989.

_____/s/ David N. Levine_____
DAVID N. LEVINE
Ga. Bar No. 448400
Attorney for Appellant

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing NOTICE OF APPEAL upon opposing counsel herein by depositing same in the United States Mail with sufficient

postage affixed thereon and addressed as follows:

Henry B. Sams, Esq.
1916 Piedmont Road
Atlanta, Georgia 30324

This 30th day of August, 1989.

_____/s/ David N. Levine_____
DAVID N. LEVINE
GA. BAR NO. 448400
Attorney for Appellant

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

NOTICE OF SERVICE TO:
Charles S. Baker
201 Allen Road, Suite 402
Atlanta, Georgia 30328-4836

MOFFETT & HENDERSON, P.C., Attorneys, Plaintiff(s)	GARNISHMENT SUMMONS NO. 89-16925-G
-versus-	
ELIZABETH J. FASSE, Defendant(s)	
GEORGIA FEDERAL BANK FSB, Garnishee. 20 Marietta Street 6th Floor Atlanta, Ga. 30303	

MARSHAL'S ENTRY OF SERVICE

GEORGIA, FULTON COUNTY

I have this day served Summons of Garnishment issued upon the within Affidavit on Georgia Federal Bank by serving same on Ms. McKinney it Mgr. and

personally in charge of the office and place of business at the time of service on Garnishee in said County at 1050 o'clock A.M.

This 19 day of July, 1989.

/s/ N.W. Thomas 422, Deputy Marshal.

==========

Constitution: State of Georgia

Article 3, Section 6, Paragraph 4:

(a) Laws of a general nature shall have uniform operation throughout the state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

(c) No special law relating to the rights of status of private persons shall be enacted.

Constitution: State of Georgia

Article 1, Section 1, Paragraph 2:

Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

Official Code of Georgia, sec. 9-11-56:

(e) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in the evidence, and shall show affirmatively that the affiant is competent to testify to the matters therein.

(g) Should it appear to the satisfaction of the court at any time that any of the affidavits presented ... are presented in bad faith ... the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party may be adjudged guilty of contempt.

United States Supreme Court Rule 24.6:

A brief must be ... free from burdensome, irrelevant, immaterial and scandalous matters. A brief not complying with this paragraph may be disregarded and stricken by the Court.

Georgia Uniform Court Rules.

21. LIMITATION OF ACCESS TO COURT FILES

All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below.

21.1 *Upon motion by any party to any civil action, after hearing, the court may limit access to court files respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for the limitation.*

End Note One:

Petitioners' attorney Thomas V. Cassidy after education at the University of Notre Dame and Northwestern University School of Law was admitted to practice by the Illinois Supreme Court on October 10, 1957 (R.App. 1); admitted to the Bar of this Court on February 19, 1991 (R.App. 3) upon motion, application and Certificate Of Admission and Good Standing of the Illinois Supreme Court dated January 23, 1991 (R.App. 1); Cassidy's late father was a former Attorney General of Illinois and served for a period pro tem as Governor of that State during the incapacity of then Governor Horner; for many years Cassidy has served as an ad hoc member, for this turn (pro hac vice), of the Georgia State Bar Association Alcohol and Drug Committee promulgated by the Georgia Supreme Court to assist alcohol and

chemically impaired judges and lawyers under the chairmanship of Henry Troutman (404/433-3259) formerly a law partner of Troutman and Sanders of Atlanta; in addition, Cassidy for many years has actively assisted the committee of the Illinois State Bar Association's Lawyers Assistance Program promulgated by the Illinois Supreme Court to assist alcohol and chemically impaired judges and lawyers, both with a satisfactory measure of success; for many years Cassidy has devoted a majority of his free time to voluntarily working in the private and public area of chemical dependency; many, many years ago, and beyond his midlife, Cassidy through medical diagnosis learned of his allergy to ethyl alcohol; immediately sought medical treatment and has not for years to present used any type of alcoholic beverage and never in

life used drugs either recreational or abusively; this malady and disease is not uncommon to the neighborhood of the world's population, and the contracting of it by a man or woman cannot be regarded as unprofessional, especially when such individuals are big enough people to do something about it as did Cassidy years ago.

As to the affidavit assertions of respondent's attorneys, to wit, Henry Brian Sams: Cassidy was not on the date of Sams' affidavit [August 16, 1989] (Res.App. 2, 3) or presently under investigation by any "state bar"; as to the affidavit allegation of attorney Sams regarding hearsay statements of persons Stephanie Davis (Res.Brief. 3), [Note: Sams at this point incorporates by reference Davis into his affidavit (Res.App. 2), her name is no where to be found there]; Kim Warden

(Res.App. 2) and attorney "Mr. Sallee" a\k\a Attorney Mark Thomas Sallee (Res.App. 2, 3) are not of Sams' personal knowledge, do not set forth such facts as would be admissible in the evidence and attorney Sams could not give testimony to these hearsays pursuant to Official Code of Georgia, sec 9-11-56 (e). (R.App. 16) and are presented in bad faith by attorney Sams and respondents attorneys pursuant to Official Code of Georgia, sec 9-11-56 (g) (R.App. 16) and subject these attorneys to expenses, attorneys fees and contempt of the Georgia Superior court. (R.App. 16) Davis', Warden's and Sallee's affidavits were never produced by respondent's attorneys as was Civil Administrator Kimberly A. Warden's affidavit by petitioners' attorney, (App. 164) and attorney Mr. Sallee by his own admission was <u>not</u> one of petitioners'

attorneys at the time of Sams' affidavit. Mr. Sallee had prior been discharged by petitioners Fasse and Cassidy for misappropriation and conversion of client's funds and seethed with ill-will. Yet another matter for the appropriate tribunal or agency of Georgia state government.

Thomas V. Cassidy apologizes to the Court that this scandalous and untrue matter must be discussed but as petitioners' attorney feels too strong an obligation to his clients-petitioners to yield to the slightest chance that they might be prejudiced in the eyes of this Court by these prevarications.

The rules of this Court require respectful reverence and strict obedience.

It's "OK" to be an advocate but it's not "OK" to abuse people.

Respectfully,

/s/ Thomas V. Cassidy

THOMAS V. CASSIDY, so certifies.

Attorney for Petitioners
March 20, 1991